Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

_____ Term, 2005

PHILLIP A. JONES SR.,

Petitioner,

v.

FULTON COUNTY GOVERNMENT,
GEORGIA GENERAL ASSEMBLY
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. May Fulton County Government's failure to obey The Civil Service Act of 1883; as amended, Title VII of the Civil Rights Act of 1964 and Age Discrimination Act of 1967; show defiance to The Employment Dispute Resolution Programs and; when The State of Georgia passed Legislature (OCGA 45-20-1 et. al.) it failed to establish a local level (Civil Service Commission Board); is not the State of Georgia obliged to uphold the board's mandate and not the Court and, did the Federal Courts acceptance violate the President's mandate for a Civil Service Commission Board?

LIST OF PARTIES
AND CORPORATE DISCLOSURE STATEMENT

All of the parties to the proceedings are named in the caption except the below.

1. Fulton County Department of Environment And Community Development.

2. Fulton County Office of County Manager

3. Fulton County Personnel Department

4. Fulton County Board of Commissioners

5. Fulton County District Attorney

6. Governor of Georgia

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Petitioner, Phillip A. Jones Sr., respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals Eleventh Circuit denying in a conflict with the decision of another United States court of appeals on the same important matter and this court decisions; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, vacating an Order of The United States District Court Northern of Georgia Atlanta Division which granted summary judgment to Fulton County Government and denial of Jones' motion of protection within the laws governing the United States of America for injunctive relief under Title VII of the Civil Rights Act of 1964, Age Discrimination Act of 1967 and the Civil Service Act of 1883; as amended, within the Civil Service Act of 1943.

OPINIONS BELOW

The Circuit Court Opinion reported (12-14-04) is reprinted. U.S. District Court Northern District of Georgia Atlanta Division Order, reported (5-27-04), is reprinted. The Judgment of the U.S. District Court Northern of Georgia Atlanta Division (3-27-04), is reprinted. The U.S. Magistrate Order for Service And Recommendation (3-31-04), is reprinted. And, The Municipal Court of Alpharetta Criminal Arrest Warrant(8-8-03), reprinted, assualt by Fulton County Government.

STATEMENT OF JURISDICTION

The judgment of the Eleventh Circuit was initially entered on December 14, 2004. A timely petition for rehearing was denied on February 4, 2005. This Court has jurisdiction under 28 U.S.C § 2101(e) and 28 U.SC. § 1254 (1), (2).

STATUTORY PROVISIONS INVOLVED

This petition involves the following Constitutional and Statutory provisions:

1) Title VII of the Civil Rights Act of 1964
2) Age Discrimination Act of 1967
3) Civil Service Act of 1883; as amended
4) National Labor Relations Act, 49 as amended by 11 stat, 136 and 73 Stat 519, 29 U.S.C. § 141 et seq. (Wagner Act),
5) The State of Georgia General Assembly Legislature (OCGA - 45 -20 -01 et. seq.) to conflict within the Congress Accountability Act; as amended, to local governments' rights and remedies for employees applying 11 federal employment and work place laws, and establishing dispute resolution procedures and remedies to address potential violations of these laws; is set forth as Appendix D.

STATEMENT OF CASE

Jones was hired by Fulton County Government Merit System as a Civil Service Employee on July 21, 1986. The State of Georgia

unlawfully deregulated Federal Statute to uphold the Civil Service Act of 1883; as amended, in 1988 given local governments self governing authority as long as they provided an internal dispute resolution program. The State of Georgia has left dispute resolution programs within the local government self governing authority given appeal authority only to the Courts. This is a reenactment of the Spoils System and Georgia conflicts with the Civil Service Act of 1883; as amended. ***"An act to regulate and improve the civil service of the United States. The National Civil Service reform league, established in 1881, shortly before led the subsequent fight for congressional action. In 1883 congress passed and signed the Civil Service Act, sometimes referred to as the Pendleton Act created the foundations of the American Civil Service System".*** **The Civil Service Act states that,** ***"A Commission's Board within States on behalf of the President shall enforce and provide an annual report to the President for transmission to Congress".***

I. THE DISPUTE ADMINISTRATED

On July 21, 2003, Phillip A. Jones Sr., now (Jones), filed a timely discrimination civil action within the United States District Court Northern District of Georgia Atlanta Division. Following Jones documents of dispute resolution showing that, a second level of administrative enforcement is authorized and mandated by the State of Georgia. The State of Georgia do not have a civil service commission board to hear reviews and to

investigate violations of civil service employees. The State of Georgia ratification of the Georgia General Assembly Legislature (OCGA - 45 -20 - 01 et. seq.) given review of a local merit system to Courts is in violations of the Civil Service Act of 1883; as amended. Stating from this act, *"The commission board is authorized to make investigations concerning the facts, and may report upon all matters touching the enforcement and effects of said rules and regulations, and concerning the action of any examiner or board of examiners; hereinafter, provided for its own subordinates and those in the public service in respect to the execution of this act."* The acceptance by the Federal Court within the jurisdiction of the State of Georgia by hearing these cases and by passing civil service protocol are prohibited by the Civil Service Commission.

A. State Statutory Violations

The State of Georgia since post civil war of the United States of America has been slow in equal rights for minorities. A conspiracy was reported to the United States Attorney Office in April 2004; showing, The United States Court Northern District of Georgia Atlanta Division, The United States Appeals Court Eleventh Circuit, and Fulton County Government, all governmental jurisdictions under the civil service act now showing no review or investigation. The Circuit Court has shown,*"With the decision of another United States Court of appeals on the same important matter; has decided an important*

federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings; or sanctioned such a departure by a lower court as to call for an exercise of this Court's supervisory power".

B. Civil Service Violations

The essence of Jones case shows that Fulton County Government since approval of its self governing authority has departed from establishing a fair dispute resolution program. The ratification of the State of Georgia Legislature (OCGA 45 - 20 - 1 et. seq.) open the door for local governments in Georgia to create a self governing protection at the expense of a fair administrative resolve for its civil service employees. The deterioration of a fair civil service policy shown by deleting the role of a state mandate of a civil service commission board.It prevented a second level to ensure enforcement and review of the civil service programs within the State of Georgia to enforce rules and regulations violations by local governments in Georgia. These local governments through political appointees to Federal Courts; further, the courts moved the scale of justice unfairly by the appointment of Honorable Julie E. Carnes and Honorable Susan Black as Federal Judges. These Judges have upheld open disregard of the United States Laws within these racially motivated decisions in conflict of the Civil Service Act of 1883, as amended, Title VII of the Civil Rights Act of 1964 and Age Discrimination Act of 1967. These named Judges have shown a

greater percentage only given favorable decisions for white females and against minorities especially, (Black Males). These violations against the laws governing the United States are rushed through the Courts without an investigation or review of the self governing dispute resolution programs. Jones has been harassed and retaliated by the State of Georgia allowing such course of action and given merit by the District Court and Appeals Court of Georgia shows protocol neglect to administrate a fair civil service program and enforcement agency as outlined within the Civil Service Act of 1883, as amended. The lack of enforcement exposed Jones to retaliation, harassment, racial discrimination and criminal assaults through Fulton County Government's dispute programs. The County Manager has shown open disregard to policies and procedures manipulated by Karen Handel, Chair Person Board of Commissioners in the policies administration given white employees of Fulton County Government an advantage. This act shown as racialism and upheld within the above named Federal Judges. The Fulton County Sheriff Department is currently under review within action taken by Commissioner Handel and Thomas Andrews.

C. The Personnel Violations

The deterioration of the Civil Service Act of 1883 by Fulton County Government created a record number of civil service employees including Jones filing EEOC and civil actions for protection under the United States Laws governing

discrimination of minorities. In 1995, Fulton County Government contracted with Arizona Consulting Firm of Fox Lawson And Associates to conduct a county-wide pay and classification study of the county's workforce. The Fox Lawson Study erroneously without review used a controversial approach called the "Decision Band Method" to evaluate and determine the appropriate pay and job classification for each employee. The "Decision Band Method" was use by management to demote without cause civil service employees and to create positions that were not cover under the civil service act. The management tool used to analyze the essential duties and responsibilities of employees were based on a Position Description Questionnaire (PDQ). Jones' (PDQ) of appeal was not submitted through fraudulently means showing management of Fulton County Government intentionally denied Jones a fair and unbiased review that was given to over 6,000 Fulton County employees. Jones duties and responsibilities were distributed to create other positions within Fulton County Government senior staff for white employees at the expense of Jones that, Jones was given a lower position as a result of not being evaluated by Fulton County Government Personnel Department Fox Lawson Study. The evaluation process of Jones show that race, gender, and national origin was not neutral in the Fox Lawson Study. Fox Lawson Study did consider race, gender, and national origin as an evaluation criteria. As a result of the independent study administrated by Fulton County Personnel Department showing, it was not an independent

study conducted by Fulton County Merit System evaluated Jones position as Assistant Director of Department of Inspections & Permits and Countywide Administrator of policies and procedures for environmental programs and designs were reclassified to a much lower classification to a Code Enforcement Coordinator, with a C-42 decision band. After, numerous complaints of the fraudulent review of Fulton County Government, Jones was finally given a review of his duties in 1997. The 1997 Fox Lawson Study review show that Jones no longer in duties that reflected the responsibilities of an Assistant Director and County wide Administrator (Associate County Manager). The new review shows Jones was a Code Enforcement Coordinator, with C-42 decision band appropriately to be reclassified to an Administrative Coordinator II, with a C-42 decision band. The 1997 Fox Lawson Study would not correct their original error and further adversely affected Jones by not providing Jones duties and responsibilities in 1995 as an Associate County Manager with a E-92 or greater decision band. The personnel records reflect admistrative violations of Fulton County Government shows Jones duties and responsibilities merited higher pay for Jones and up grade in position. Fulton County Personnel Department administratively sanctioned these violations by Fox Lawson Study assigned Jones duties and responsibilities to all white employees that merited a raise for Steven R. Cover, Director of the Department of Environment & Community Development, Terry Todd, Deputy County Manager and Thomas Andrews, County

Manager of Fulton County Government, showing, Jones duties and responsibilities were given to white employees. Jones did not benefit from an appeal procedure by the self governing authority that was consequently upheld by the Circuit Court.

II. THE EEOC PROCEEDINGS

Following the misrepresentation in conspirators of the Fox Lawson Study; Jones filed, an EEOC Charge of discrimination on October 27, 2000; for cause based on race and retaliation. Jones believed Fulton County discriminated against him based on his race (black), gender (male) and retaliated against him in violations of Title VII of the Civil Rights Act of 1964; as amended by given all white employees Jones's duties. In 2000, the open disregard of laws for Jones protection under the civil service act; showed, administrative protocol violations by Fulton County Government were now being administered through new Legislature (OCGA 45-20-1 et. seq.). Fulton County Government self governing administration of its dispute resolutions programs now shows no review or investigation by a second level as authorized by the Civil Service Commission Board for the State of Georgia in conflict of the Civil Service Act of 1883; as amended.

A. Civil Service Violations Led To An Assault

As a result of the 1995 Fox Lawson Study, Jones has worked and he is currently working as an Administrative Coordinator II, with a decision band

of C-42. He has been forced to train employees given his former duties and responsibilities. The assigned decision band showed to be a demotion without cause. Fulton County Government Merit System as the records showed do not comply with the Civil Service Act of 1883; as amended. Fulton County Government has a record number of EEOC filing by civil service employees that complaints of the Fulton County Government Dispute Resolution Program are openly retaliating and harassing its employees through Thomas Andrews, County Manager Fulton County Government, Karen Handel, Chairperson Fulton County Board of Commissioners, Honorable Julie E. Carnes and Honorable Susan Black. Minorities in the State of Georgia like Jones has been exposed to separate and not equal laws within the United States preventing his rights for due process.

B. Criminal Acts Report to District Attorney

Fulton County Government now operating criminally and unlawfully without a second level of review by the State of Georgia have exposed Jones to retaliation, harassment, age and sexual discrimination. Jones filed an EEOC charge of discrimination on December 19, 2002. The particulars are; he was denied a promotion. Jones had to reapply for his own duties and responsibilities. During Jones interview, he was told he was too old and outdated by Steven Cover, now in Jones duties and responsibilities. Jones was attacked on December 9, 2002 by his former employees and a cover up was documents by Fulton

County Government County Manager within the self governing authority. It has prevented a review from a civil service commission board by the State of Georgia led to a timely filingwithin the Court.

III. THE COURT PROCEEDINGS

Jones civil claims showed that race was used to administrate policy within Fulton County Government. Racialism was being performed now by the same white senior employees that benefited from the 1995 Fox Lawson Study showing Bob Brandes, Personnel Director as the link between a fraudulent Fox Lawson Study review conducted by Joseph Warfel in a conspiracy to create undue influence within the employment of Jones. These acts continues currently in 2005 showing that Steven Cover now in Jones duties and responsibilities; as well as, Terry Todd, Deputy County Manager are administrating under Jones role within Fulton County Government.

A. The Court's Refusal to Accept Evidence

At the conclusion of the evidence, appellant Jones motioned pursuant to Rule 9 of the United States Supreme Court Procedural for a judgment of acquittal because the Government within the State of Georgia and Fulton County Government failed to establish a civil service program in line with the Civil Service Act of 1883; as amended, for considerations governing review on Certiorari. Jones argue that the evidence revealed that the Courts decisions conflicts with the 14 Amendments

of the United States Constitution for due process with decisions of appeals on the same important matter and the Eleventh Circuit conflicts with its own rulings as a State Court of last resort. Jones argue that a conspiracy exists within government to deny Jones and other black people and other minorities; their United States Constitutional Rights within a Civil Service Act of 1883 and Title VII of the Civil Rights Act of 1964. The underlining motive of the Georgia General Assembly and Fulton County Government through political appointments by lobbying for District Judges like Honorable Julie E. Carnes and Honorable Susan Black to uphold post Civil War segregation laws ensuring that black and other minorities (Jones) are not given equal protection under United States Laws. The records shows that the District Court and Appeal Court Judges of Georgia appointments are not equal to race requirements in the civil service act third mandate within the "States, Territories and District of Columbia upon the basis of population as ascertained at the last proceeding census". The Eleventh Circuit of Georgia Atlanta Division has not given favorable Judgments to minorities upholding separate and not equal as the essence of the utilization of laws shown to openly violate Jones United States Constitution Rights within the 14th Amendments for due process as a citizen in good standing of the United States.

B. District Court Protocol Violations

The United States District Court Northern District of Georgia in Civil Action: 1:03-CV-2036-JEC violated a Supreme Court ruling in accepting the role of the Civil Service Commission; unlawfully, did violate the fourth step of the Civil Service Act of 1883; as amended. The particulars are, "Said commission may make investigations concerning the facts, and may report upon all matters touching the enforcement and effects of said rules and regulations, and concerning the action of any examiner or board of examiners; hereinafter, provided for, and its own subordinates, and those in the public service, in respect to the execution of this act." District Judge Julie E. Carnes and Magistrate Judge Alan J. Baverman admitted their court was not equip to investigate the violations within Fulton County Government Merit System thus, showing the information presented to the District Court was not reviewed nor investigated. The only ruling made by the District Courts was that Jones submitted many motions. The District Court failed to disqualify itself as a Civil Service Commission that did not uphold Jones rights to appeal to a board as a civil service employee. The District Court role as a second level of review for civil service employees is not an enforcement arm of the protocol of the president mandate of the State of Georgia to follow these guidelines not enforced or irresponsibility reviewed by Judge Carnes. Jones submitted many motions to aid the District Court in the

interpretation of the Civil Service Act of 1883; as amended, through a second level of review thus making due process of the law a conflict within the jurisdiction of Judge Carnes as an appointed political federal judge lobbying for the State of Georgia unlawfully in her role as a federal judge.

C. Magistrate Judge Administrative Violations

The United States District Court Northern District of Georgia Atlanta Division was provided Jones Initial Disclosures on August 7, 2003. Attached to this document were a letter of response from Governor Sonny Perdue dated May 19, 2003, recognizing civil service violations within Fulton County Government. On July 18, 2003, a Notice of Referral to Magistrate Judge for Title VII Discrimination Action was issued to this case. A timely motions for Temporary Relief was issued by Plaintiff on July 21, 2003. The District Court failed to investigate the harassment and retaliation of Fulton County Government on Jones behalf for filing a Civil Action of Discrimination. The District Court failed to be a reviewer of the Civil Service Act of 1883; as amended, by not investigating incidents after incidents and in doing so, the Court has been shown not to be administering a commission board of review at the State level allowed for Jones as a Civil Service employee. A timely filing of a "Motion to Provide Evidence and Show Racial Discrimination" was given to the District Court on October 14, 2003 with attachments. Judge Julie E. Carnes and Judge Alan J. Baverman Court responses were not in line

with administrative protocol of the United States Civil Service Act of 1883; as amended. Jones provided to the District Court on September 29, 2003, Order to be signed by the District Judge For Injunctive Relief "Order To Initiate Investigation / Review of Fulton County Government Personnel Regulations". The District Court failed to respond in protocol of the United States on behalf of the President as a Civil Service Commission Board. The documents presented to the Court for personnel violations within policies and procedures were at a level of professionalism from Jones who is an official that requested the United States to review in detail that was not upheld by the District Judge Alan J. Baverman in a timely submittal of the Alpharetta Court order dated August 8, 2003, showing Fulton County Government officials assaulted Jones. On September 30, 2003 filed in Chambers United States Magistrate Judge N.D. Georgia denied Jones motions thus accepting the unlawful review to uphold the State of Georgia General Assembly Legislature (OCGA 45-20-1 et. seq.)

D. District Court Review Shows Acceptance to Use Race in Administration of Policy

Judge Alan J. Baverman a white male and Judge Julie E. Carnes, a white female within these proceedings willfully showed protection of the State of Georgia in post Civil War Laws in separate and not equal for minorities (Jones) laws providing to minorities within the United States. The District Court being a irresponsible

administration of the United States Laws should have allowed review of the Civil Service Act of 1883; as amended, within a proper jurisdiction in the executive brand of the United States. The District Court was presented on September 22, 2003, "Motion To Hold Settlement Conference Before U.S. Magistrate. & Motion to Locate Room". This motion was filed to aid the District Court in its role as a Civil Service Commission Board. The Court was asked within Jones filing dated September 29, 2003, "Motion To Direct Fulton County District Attorney To Create A Special Grand Jury and To Investigate Criminal Intent within The Administration And Management of Fulton County". The District Court now being shown to be an irresponsible administrator of the Civil Service Act denied an investgation by the District Attorney of Fulton County that speaks for the People of Fulton County. On September 8, 2003, The Civil Rights Division, Employment Litigation Section, Karen L. Ferguson Civil Rights Analyst Employment Litigation Section" reaffirm that Jones have a right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. (2000 -2000e), et. al. against Fulton County Government Department of Environment et. al., No: 110200300901.

E. Judge Julie E. Carnes A Conflicts for Fulton County Review

As the records shows, Jones was being harassed and retaliated against by Fulton County Government and the District Judge Julie E. Carnes

a political appointee. Judge Carnes has family connection to Fulton County Government with her father name used for the Fulton County Judicial Center and State Court Building are visible conflicts for Judge Carnes. Judge Carnes association with Fulton County Attorney Office; as well as, associated laws of the United States shall show Judge Julie E. Carnes as a federal Judge is in question with the supervisory role of the United States Supreme Court; noting her irresponsible administration of our laws within the State of Georgia governing the United States Constitution of America. A timely filing was presented to the District Court on July 18, 2003. Jones submitted on February 17, 2004, The "Plaintiff (Phillip A. Jones Sr.)'s Answer "Brief In Support of It's Motion For Summary Judgment". On January 28, 2004, an Order of Service Report and Recommendation was issued to Jones by U.S. Magistrate Judge Alan J. Baverman. Jones filed on February 2, 2004 his timely "Objection To United States Magistrate Judge's Non - Final Report And Recommendation". On February 17, 2004, Jones filed , "Plaintiff (Phillip A. Jones Sr.)'s Answer To Defendant's Statement of Material Facts To Which There Is A Cause For Doubt And Plaintiff Should Be Given A Favorable Judgment Based on His Claims". On March 31, 2004, Judge Alan J. Baverman issued an "Order For Service of Report And Recommendation ". The Plaintiff Jones, filed on April 8, 2004,"Plaintiff's Objections To United States Magistrate Judge's Final Report And Recommendation of (Defendant Fulton County Government's Summary Judgment)". On May 27,

2004, Judge Julie E. Carnes, United States District Judge , for consideration of Magistrate Judge Report and Recommendation Ordered and adjudged that the Plaintiff take nothing and dismissed Jones civil action. In conjunction, with Judge Carnes Order, Fulton County Government issued a warning letter to Jones without cause starting back open harassment and retaliation that is shielded by the federal courts in a conspiracy to use race as an administrating tool to disqualify Jones as a civil service employee. It shows prevention of Jones' rights under the 14th Amendments for due process within Title VII of the Civil Rights Act of 1964.

IV. CIRCUIT COURT CONFLICT WITH DECISIONS

Jones filed his timely appeal within the United States Court of Appeal Eleventh Circuit on June 23, 2004. The Eleventh Circuit received Jones Initial Brief of Appellant "Phillip A. Jones Sr. on July 23, 2004. A timely submittal of the Brief for the Appellant Response Phillip A. Jones Sr. was filed on September 2, 2004. In conjunction, a grievance was filed within Fulton County Government on May 13, 2004; two grievances for retaliation and harassment by the Department of Environment And Community Development. The grievance review committee under Fulton County Policy 100-24 shows numerous conflicts within the dispute resolutions programs that showed internal conspiracy within Fulton County Government to deny Jones his rights as a civil service employees. Fulton County Commissioner Chairperson Karen

Handel refused to respond responsibly within her role in the grievance process in a letter requesting due process dated August 6, 2004. Joseph Warfel of the Department of Environment And Community Development showed workplace violence towards Jones as an attempt to retaliate and harass Jones doing these proceeding. The Department of Environment & Community Development harassed Jones through policy on September 15, 2004 with a submittal to Jones for a Fitness for Duty Evaluation with out cause not providing the reason for such an evaluation. Fulton County as of March 21, 2005 has not evaluate Jones in untimely rescheduling of set evaluation in an attempt to harass Jones. A timely "Motion For Relief From Appellee (Fulton County Government)'s Director Steven R. Cover letter dated September 15, 2004, placed appellant on official leave and barred Jones from all County facilities without cause after mandatory appointment for Fitness for Duty Evaluation For Fulton County Mental Health Department" was filed in the Eleventh Circuit on September 16, 2004. The Eleventh Circuit failed to investigate as required by the Civil Service Act of 1883; as amended. The Eleventh Circuit now showing how inappropriate to have the judicial system to administrate the Civil Service Commission duties in line with the Executive Branch role within the United States Constitution and Jones by law of this land has without a doubt shown a conspiracy within the Federal Court System. The Eleventh Circuit Denied Jones Motion for Relief without an investigation or other review

mandated by the State of Georgia within its last court of resort.

A. Fulton County Interferred With A Fitness For Duty Evaluation

While Jones was on official leave from Fulton County Government, Steven R. Cover, Director of The Department of Environment and Community Development by passed the Fulton County Government's Medical Doctor Dr. Dwight Owens stated treatment. Mr. Cover harassed Jones and the Jones Family with daily mailing to Jones legal address to harass. Mr. Cover actions resulted in a suspension without pay while on a fitness for duty evaluation for Jones. Mr. Cover did not have cause showing the follows; a letter was received at my Jones mother address dated October 8, 2004 from Steven R. Cover. Jones received this letter on October 23, 2004. This letter stated the warning letter dated May 12, 2004 on appeal as the first offense and stated that Jones was to meet Dr. Owens no later than October 13, 2004. If Jones did not make the deadline "This is punishable under Fulton County Personnel Regulations 1800-2, Article 11B". Based upon the facts above, I believe that a suspension of ten days is justified" etc... Jones met Dr. Owens on September 15, 2004 and followed Dr. Owens noted instruction. Prior to Jones suspension Jones tried to make contact with Dr. Owens so he would inform Mr. Cover Jones had made his appointments. Dr. Owens refused to respond to Jones calls and a letter to Dr. Owens dated October 11, 2004. Consequently, Jones was

suspended by Steven Cover without reasons as open harassment allowed under the Jurisdiction of the United States Court of Appeals Eleventh Circuit. The role of the Court in Georgia smust show criteria from the supervisory level must be defined to prevent open violations to human being in regard to racial discrimination and harassment.

B. Court Used In Conspiracy to Discriminate

A conspiracy to deny minorities their rights under the Civil Service Act of 1883; as amended, and Title VII of the Civil Rights Act of 1964 have been shown within the State of Georgia and the Federal Court of last resort under the supervisory jurisdiction of the United States Supreme Court. The United States Court of Appeals for the Eleventh Circuit File No: 04-13142, denied injunctive relief for Jones on December 14, 2004, and "Accordingly, we affirm the district court's grant of summary judgment to Fulton County and denial of Jones's various motions for injunctive relief ."Affirmed". A timely petition (s) for rehearing was denied by the United States Circuit Judge Susan Black for rehearing En Banc "Are Denied". A motion to stay of mandate was filed timely in The United States Court of Appeals for the Eleventh Circuit on February 14, 2005 by Jones. A letter sent by the Eleventh Circuit dated February 12, 2005 issuing a mandate and returning Jones original exhibits and original records on appeal showing an overly zealous circuit court sent Jones information back to Luther D. Thomas Clerk , United States District Court. On March 1, 2005,

United States Judge Susan Black denied Jones timely filing for a stay of issuance of mandate. These documents shows conspiracy within the federal courts by Judge Julie E. Carnes and Judge Susan Black to deny minorities their United States Constitutional Rights of Due Process given in the 14th amendment. Further, exposing the civil service employees and Jones a human being to an unfair administration of the Civil Service Act of 1883; as amended, by not allowing a civil service commission board for review and investigation of offenses against employees protected by the Civil Service Administration of the United States under Presidential authority. Further, showing conspiracy to prevent minorities their rights within conflicts of decision of both federal courts in Georgia their denial of Jones Title VII of the Civil Rights Act of 1964 and Age Discrimination Act of 1967 as both are amended.

Conclusion, respectfully submitted for granting a writ of cetiorari for cause in violation of The State of Georgia, Fulton County Government and Federal Courts' mandate to uphold the Civil Service Act of 1883; as amended, Title VII of the Civil Rights Act of 1964 and Age Discrimination Act of 1967. The Supreme Court of the United States has supervisory authority.

THE DECISION BELOW

The district court simply adopts the Magistrate Judge's Report And Recommendation and granting defendant's motion for summary

judgment even though the defendant openly violated the Employees Dispute Resolutions Programs for a self governing authority.

The court below managed to decide Jones claims without excepting mounting facts of evidence showing retaliation, harassment and racialism were open within Fulton County Government. Several of the Eleventh Circuit Courts of Appeals' opinion that confornted mootness have refused to consider minorities rights within Title VII of the Civil Rights Act of 1964, Civil Service Act of 1883; as amended, and Age Discrimination Act of 1967; recognizing the need to uphold the rule of law and the unique role the employees plays in the nations civil service within our government.

REASONS FOR GRANTING THE WRIT

I.

A WRIT WARRANTED BY THIS COURT BECAUSE PETITIONER'S RIGHT TO DUE PROCESS AND FAIR JUDICIAL NOTICE WAS ERRONEOUSLY DENIED PETITIONER'S REQUEST UNDER FED. R. CIVIL PROCEDURAL "EVIDENCE" 401, A VIOLATION WITHIN GEORGIA GENERAL ASSEMBLY LAW OCGA 45-20-1 ET. SEQ.; CONFLICT WITH THE CIVIL SERVICE ACT OF 1883 AS AMENDED; THAT THE COURT

CHARGE A VIOLATION OF U. S. C. TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

Petitioner requests, pursuant to Fed. R. Civil "Records" P. 902(1),(2),(3) and (8), that the trial court charge a violation for not taken judicial notice on relevance material to the case; Fed. R. Civil P. (401) "Relevant Evidence" and material facts that produce direct and circumstantial evidence, was not justified within **Powell v. First National Bank and Trust Co.** 58 Ga. App. 648, 199 S.E. 668 (1938); 31 C.J. S. Evidence, § (3)(a); the judge has broad discretion in taking judicial notice. The reasoning below did not justify the refusal of evidence that this court failed to accept the facts provided by the Petitioner. Judicial notice will be taken of records and proceeding in the same case; **Wooodruff v. Balkcom**, 205 Ga. 445, 53 S. E. 2d. 680 (1949); The magistrate judge review failed to rise to civil rights § 7 Government and Administrative Matters, "General matters of government and certain related be judicially notice, **Madden v. Fulton County,** 102 Ga. - App. 19, 115 S.E. 2nd 406 (1960), see 29 AM. Jur. 2d. Evidence, § 37-48; Circumstantial Evidence of this case that was not considered by the United States Magistrate Judge. It shows a conspiracy within Georgia's legal system to deny inherent civil rights and civil service rights for its citizens by not granting minorities due process.

A. THE CONFLICTS WITHIN THE DISTRICT AND APPELLATE COURTS THREATENS NATIONAL UNIFORMITY IN OUR DISCRIMINATION LAWS

The Magistrate Judge's Report and Recommendations 28 U.S.C. § 636 (b)(1), Fed. R. Civ. P. 72(b) and that Court's Local Rules 72.1(D)(2) showed biases to Fulton County Government Fed. L. R. C. P. 58.3 Retittus (B). Judgment Modified, Vacated or Reverse, showing error by the District Court within Fed. Rules of Civil Procedures, Rule 56 (e); **Celotex Corp. v. Catret,** 477 U.S. 317, 324; 106 S. Ct. 2548-53; 91 L. Ed. 2d 265, 272-3; The District Court failed to continue this case showing violations to due process within ID at 519. see also, **Donaldson v. Clark,** 78 6f. 2d 1570, 1575 (11th Circuit 1986); **Griffith v. Wainwright,** 77 2f., 2d 822, 825 (11th Circuit 1985). The District Judge failed to receive the Petitioner's objections within approval and adopted as the opinion of the court.

Timely objections, they were filed on the Federal Magistrate's violations of the Petitioner as Fulton County Government failed to adhere to the 20 days limits, pursuant to that court local rules, as well as; the federal rules of civil procedures, pursuant to that court's order dated April 14, 1987, opposing counsel was notified of the 20 days deadline from the said motion served, of filing all materials, federal rules of civil procedure, rule 56(c); **Moore v. State of Florida,** 703 F. 2d 516, 519 (11th Cir. 1983).

Similarly, Petitioner showed violations of the District Court in **Walker v. Nations Bank of Fla. N.A.**, 53 F. 3d. 1548, 1556 (11th Cir. 1995) proof to justify Plaintiff legal requirements, in United

States **Merrit v. Dillard Paper Co.,** 120 F. 3d. 1181, 1189 (11th Cir. 1997), the Eleventh Circuit has found direct evidence where "actions or statements of an employer reflect a discriminatory or retaliation attitudes" ; show the acceptance of retaliation is in conflict with Title VII of the Civil Rights Act of 1964, 42 U.S.C § 2000e et. al., and The Age Discrimination in Employment Act (ADEA) 29 U.S.C. § 621 et. al.

B. THE FEDERAL COURTS ACCEPTANCE OF THE EXECUTIVE BRAND ROLE PREVENTS PROTOCOL WITHIN DUE PROCESS OF OUR LAWS

Significantly, the court observed that suits alleging procedural harm are only rendered moot with the subject procedure is followed. Specifically, the filing of the petitioner asserted was proper. The Eleventh Circuit with evidence that is presented by the petitioner that could show that court jurisprudence "Cat's Paw Theory", **Zaklama v. Mt. Sinai Medical Center,** 824 F. 2d. 291, 294 (11th Cir. 1988), the evidence is direct **Stimpson v. City of Tuscaloosa,** 186 F. 3d. 1328, 1332 (11th Cir. 1999); the decision maker is not the final word on all matters in management the acceptance of that Court to accept open disregard by Fulton County Government to policies and procedures continued within the review of the District Court and the Eleventh Circuit showing a conspiracy to deny due process in the State of Georgia.

The Eleventh Circuit of Appeals rejected Petitioner's argument and affirmed his conviction.

II.

THE WRIT SHOULD BE GRANTED TO THE PETITIONER BECAUSE THERE IS A CONFLICT WITH THE DECISION OF THIS COURT AND OTHER UNITED STATES COURT OF APPEALS AND THE ISSUES ARE IMPORTANT

The Eleventh Circuit decisions in this matter directly conflicts with Title VII of the Civil Rights Act of 1964 decisions of the United States Courts' Fifth, Seventh, and Eleventh Circuits, each of which has stated federal action in violation of Title VII of the Civil Rights Act of 1964; see **Baker v. Buckeye Cellulose Corp.,** 856 F. 2d. 167, 169 (11th Cir. 1988)(Emphasis in Original); A preliminary injunction an extra ordinary and drastic remedy not to be granted unless the Movant (Petitioner) clearly establish the "Burden of Persuasion" as to the answered , the four requisites. Civil Rights § 38 employee's allegedly retaliatory actions for employees filing suit could reasonably have been expected to grow out of original charge before Equal Employment Opportunity Commission of retaliation and, therefore, was with the district's Court's jurisdiction, for Civil Rights Act of 1964, § (2000 to 2000e - 17; 42 U.S.C. A. § 1981).

A. FULTON COUNTY POLICIES AND PROCEDURES VIOLATIONS

It shows open violations to human rights as demonstrated in open policies and procedures violations of Fulton County Government in the March 11, 2005, Brian G. Nichols shooting and killing of 3 Fulton County Employees; Judge Rowland Barnes, Deputy Hoyt Teasley and Julie Annn Brandau and Federal Agent David Wilhelm. The attacked of Fulton County Deputy Cynthia Hall showing security violations by Fulton County Board of Commissioners that did not allowed budget allocations. These same violations are shown in the attack of the Petitioner by a system that fails to follow written laws within, the failure of the Federal Courts to properly review EEOC charges and complaints; **Cheek v. Western, & Southern Life Ins. Co.,** 31 F. 3d. 497, 501 (7th Cir. 1994) (Emphasis on Original) quoted in **White v. Wells Fargo Guard Serv.,** 908 F. Supp. 1570, 1581 (M.D. Ala., 1995); **United States v. Jefferson County** 720 F. 2d. 1511, 1519 (11th Cir. 1983); A District Court may grant injunctive relief if the Movant show the 4 requisites. The Plantifff has provided a prima - facie case through affidavits, taped meeting, (Ga. Open Record Act), Court Orders (Alpharetta Court) and documentation through summary judgment that shows rule 56 (c) of the non- moving partying; showing open violations to Fulton County Government violations of the enforcement of its Personnel Rules and Regulations. This case now before this Court will prevent other atrocities

against human being within the State of Georgia open disregard of the Civil Service Act of 1883.

B. AN INJUNCTION FOR THE STATE OF GEORGIA TO ADMINISTRATE PROTOCOL WITHIN THE CIVIL SERVICE ACT

Fulton County Government through it ineffective discrimination policies and procedures to prevent racialism show retaliation & harassment have shown the Court; **Hutchens v. Vaughn,** 10 Fed. Rules Serv., 2d. 1382, 41 Fed. 87 (WD. Va. 1966) Summary Judgment less likely to be appropriate in negligence cases...but this will not prelude summary judgment in every negligence case; **Allen v. Southern Greyhound Lines, Inc.,** 11 Federal Rules Serv., 2d. 1257, 27 or Supp. 872 (Ed. La. 1967(, summary judgment in favor of plaintiff; negligence and upon the undisputed facts; **Watson v. Blues Inc.,** 324 F. 3d., 1252 (11th Cir. 2003); A company that has a sexual harassment policy and disseminates it to its employees may still be liable for harassment if the policy was ineffective. The petitioner has presented the Court's violation under Fed. R. Civ. P. 404 (a) (4) (Proof of Sexual Misconduct) in testimony presented by Mustafa Bey to the Alpharetta Municipal Court. It demonstrate open disregard of local government and federal courts to adhere to the laws of the United States of America.

Gupta v. Florida Bd. of Regents, 212 F. 3d. 571, 583 (11th Cir. 2000); In determining whether the conduct was objectively hostile and

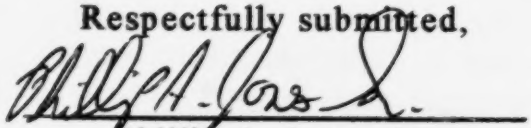
The petitioner has answered in the Court's record submittal dated February 17, 2004; Petitioner Answer, "Brief In Support of Its Motion For Summary Judgment" page 21, section 1, "Plaintiff's Answer To Defendant..."

Further, **Henson v. City of Dundee**, 682 F. 2d. 897, 904 (11th Cir. 1982); In providing a claim for a hostile work environment, **Brenda v. Wolf Camera, Inc.** 148F. Supp. 2d. 1371, 1376 (S.D. Ga. 2001)...As for the severity of prong of the analysis, as the United States District Court for the Southern District of Georgia, **McDonald's Corp. v. Robertson**, 147 F. 3d. 1301, 1306 (11th Cir. 1998) (Quoting, **All Care Nursing Serv., Inc. v. Bethesda Memorial Hosp.,** 887 F. 2d. 1535, 1537 (11th Cir. 1989)). Although, "Courts are to presume irreparable harm in Title VII cases", Baker, 856 F. 2d. at 169, the petitioner has demonstrated to the Court his merits.

CONCLUSION

For the foregoing reasons, it is respectfully urged that the request for Writ of Certiorari be issued.

Respectfully submitted,



Phillip A. Jones Sr.
Pro Se Counsel of Record
Phillip A. Jones Sr.
557 Lynn Valley Road S.W.
Atlanta, Georgia 30311

04-13142-FF

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PHILLIP A. JONES SR.
Plaintiff-Appellant,

v.

Fulton County Government,
Appellee.

December 14, 2004, Decided

COUNSEL:

Phillip A. Jones, Pro Se Counsel, Administrator and Fulton County Official resolving protocol violations within the State of Georgia Dispute Resolution Programs and Fulton County Government. Initial violations resulted at the first stage of the grievance policies and procedures and continued to the Federal Courts.

Rolesia Butler Dancy, Senior Attorney & Carmen Alexander, Staff Attorney, Fulton County Government Attorneys.

JUDGES :

Before: TJOFLAT, DUBINA AND BLACK, Circuit Judges

PER CURIAM:

Phillip A. Jones, Sr. appeals the district court's (1) grant of summary judgment to Fulton County Government in his lawsuit alleging violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., and Age Discrimination in Employment Act, 29 U.S.C., et seq., and (2) denial of his various motions for injunctive relief.

Jones raises numerous issues on appeal, none of which have merit. We address these issues in turn.

I. Discussion

A. *Statement of Fact to Which There is No Cause for Doubt*

Jones first argues the district court erred by not address his :Statement of Fact to Which There is No Cause for Doubt." He asserts that he complied with Northern District of Georgia' Local Rule 56.1(B)(3).

Local Rule 56.1B(2) provides that "[t]he respondent to a motion for summary judgment shall attach to the response separate and concise statement of material facts, numbered separately, to which the respondent contends there exists a genuine issue to be tried. Response should be made to each of the movant's numbered material facts. All material facts contained in the moving party's statement which are not specifically controverted by the respondent in respondents statement shall be deemed to have been admitted." Further, Local Rule 56.1B(3) requires that "[a]ll documents and other record materials relied upon by a party moving for or opposing a motion for summary judgment shall be clearly identified for the court.

The district court did not err by finding Jones had admitted most of Fulton County" factual assertions in its statement of material facts. Although Jones attached to his response to Fulton County's motion for summary judgment a separate statement of material facts, he, in most instances, provided narrative explanations and failed to clearly identify the evidence that he was relying on to support his rebuttal to Fulton County's factual assertions. According, under Local Rule 56.1.B(2), he admitted most of Fulton County's factual assertions.

B. Objections to Magistrate's R&R

Jones next argues the district court erred by not considering his objections to the magistrate's R&R within its opinion.

The record refutes Jones' argument the district court failed to consider this objections to the magistrate's R&R. In its order, the district court noted Jones had filed objections to the magistrate's R&R. After stating it had reviewed the record, the district court adopted the magistrate's R&R as its opinion.

C. Exhaustion of Administrative Remedies

Jones also argues he exhausted his administrative remedies within respect to his race discrimination claim because this claim grew out of his Previous EEOC charge since the same individuals have continued to discriminate against him.

As a prerequisite to bringing suit under Title VII charge of discrimination within 180 days of the last act of

discrimination. *Jones v. Dillard's, Inc., 331 F. 3d 1259, 1263 (11th Cir. 2003)(ADEA); Wilkerson v. Grinnell Corp., 270 F. 3d 1314, 1317 (11th Cir. 2001) (Title VII).* The crucial element of the EEOC charge is the factual statement it contains. *Sanchez Brands, Inc., 431 F.2d 455, 462 (5th Cir. 1970).* A complainant is required to allege in the EEOC charge facts sufficient to trigger an investigation. Id. While the scope of an EEOC charge should not be strictly interpreted, "the 'scope' of the judicial complaint is limited to the 'scope' of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination." Id. at 465-66. The plaintiff has the burden of establishing that he filed a timely charge of discrimination. see *Jackson v. Seaboard Coast Line R. Co., 678 F. 2d992, 1010(11th Cir. 1982) (stating if the defendant denies the plaintiff has met all the preconditions of suit under Title VII, the plaintiff must prove the challenged preconditions were satisfied).*

The district court did not err in finding Jones' race discrimination was barred due his failure to exhaust his administrative remedies. Jones failed to file a charge of discrimination within 180 days of the alleged discriminatory act, his 1997 reclassification to the position of Administrative Coordinator II.

D. Sexual Harassment

Jones also argues he demonstrated evidence of Fulton County's misconduct with respect to his sexual harassment claim. He contends the cases cited by the district court were inapplicable because they did not involve the same style of sexual harassment or assault.

"To establish a prima facie case of hostile work environment sexual harassment, [the plaintiff] must show:(1) that [he] belongs to a protected group; (2) that [he] has been subject to unwelcome sexual harassment; (3) that the harassment was based on [his] sex; (4) that the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and create a discriminatory abusive working environment; and (5) a basis for holding the employer liable." *Watson v. Blue Circle, Inc. 324 F.3d 1252 (11th Cir. 2003) (quotation marks and citation omitted).* The fourth prong of the hostile work environment test contains both a subjective element and an objective element. *Mendoza v. Borden, Inc., 195 F.3d 1238, 1246 (11th Cir. 1999) (en banc).* In order to meet the fourth prong of the test, the employee must "subjectively perceive" the harassment as severe and pervasive enough to change the conditions of her employment. Id. However, in order for the plaintiff to establish a hostile work environment, the district court also must find that this perception was objectively reasonable. Id. In making this objective determination, the district court must consider: "(1) the frequency of the conduct; (2) the severity of the conduct; (3) whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and (4) whether the conduct unreasonably interferes with the employee's job performance. "Id. The court should consider the conduct in context, not as isolated acts, and consider the totality of the circumstances. Id.

The Supreme Court has noted that a recurring point in Title VII opinions is that "teasing, offhand comments, and isolated incidents" will not amount to discriminatory charges in the terms and conditions of employment. *Faragher v. City of Baca Raton, 118 S. Ct. 2275, 2283 (1998).* In Mendoza,

harassment were not sufficiently severe or pervasive to alter the terms and conditions of her employment even though her supervisor (1) had told her, "I'm getting fired up;" (2) had rubbed his hip against her hip while touching her shoulder and smiling on one occasion; (3) had made sniffing sounds while looking at her groin area on two occasions and had sniffed without looking at her groin on one occasion; and (4) had "constantly" followed her and stared at her in a "very obvious fashion." *Mendoza, 195 F.3d at 1247.*

The district court did not err granting summary judgment to Fulton county of Jones' sexual harassment claim because Jones failed to establish a prima facie case of hostile work environment sexual harassment. Jones did not demonstrate the Bey's sexual harassment was sufficiently serve or pervasive to alter the terms and conditions of his employment and created a discriminatorily abusive working environment. First, although the conduct alleged was objectively humiliating, it is undisputed that it was infrequent, occurring once. The infrequency of the conduct in this case is in stark contrast to the multiple incidents alleged in *Mendoza*, and the conduct alleged in *Mendoza*, which is similar in nature of the conduct alleged in this case was not sufficiently severe or pervasive to alter the terms and conditions of employment. Second, although Jones claimed that contact with Bey was unavoidable following the incident due to the small size of the Alpharetta office, Jones produced no evidence demonstrating how this incident interfered with his job performance.

E. Retaliation

Jones next argues he has demonstrated that Fulton County engaged in retaliatory practices that resulted in age discrimination through a "policy of racialism."

"To establish a prima facie case of retaliation under Title VII, a plaintiff must show that (1) he engaged in statutorily protected expression; (2) he suffered an adverse employment action; and (3) there is some casual relation between the two events." *Pennington v. City of Huntsville, 261 F.3d 1262, 1266 (11th Cir. 2001) (quotation marks and citation omitted).* Protected expression involves opposing an employment practice made unlawful under Title VII or charging, testifying, assisting, or participating in a Tile VII investigation, proceeding, or hearing. 42 U.S.C. § 2000e-3(a). Statutorily protected expression includes internal complaints of harassment to superiors. *Pipkins v. City of Temple Terrace, Fla., 267 F.3d 1197, 1201 (11th Cir. 2001).* "An adverse employment action is an ultimate employment decision, such as discharge or failure to hire, or other conduct that alters the employee's compensation, terms, conditions, privileges of employment, deprives him or her of employment opportunities, or adversely affects his or her status as an employee."*Gupta v. Florida Bd. of Regents, 212 F.3d 571, 587 (11th Cir. 2000) (quotation marks and citation omitted).* In order to satisfy the third element of the retaliation test, the plaintiff must show that (1) the person responsible for the adverse action was aware of the protected conduct, and (2) the protected activity and the negative action were "not wholly unrelated." *Bass v. Board of County Comm'rs, Orange County, Fla., 256 F.3d 1095, 1119 (11th Cir. 2001).* "Once a plaintiff has established a prima facie case, the employer then has an opportunity to articulate a legitimate, non-retaliatory reason for the challenged employment action. "Pennington, 261 F.3d at 1266. If that burden is met, the

plaintiff bears the ultimate burden of proving, by a preponderance of the evidence, that the reason provided by the employer is a pretext for prohibited, retaliatory conduct. Id.

The district court did not err by granting summary judgment to Fulton County on Jones's retaliation claim. Although the nature of Jones's retaliation claim is not entirely clear, to the extent that Jones is claiming that it is based on his design of the Department of Environment or his managerial performance, Jones has failed to explain how these actions were statutorily protected expressions or what adverse employment action he suffered. Further, to the extent Jones claiming Fulton County retaliated against him for filing grievances regarding his reclassification by not promoting him, Fulton County established a legitimate, non-discriminatory reason for not selecting Jones, Jones failed to establish that his proffered reason was pretextual.

F. Age Discrimination

Jones also argues he has established his claim of age discrimination because he presented evidence that younger employees with less than five years of experience were hired instead of him. He also claimed that one of his interviewers for the Director of Clean and Beautiful told him that he was "too old" for the position, as were his ideas.

The ADEA makes it "unlawful for an employer to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age." 29 U.S.C. § 623 (a)(1). "[T]he plaintiff's age must have actually played a

role in the employer's decision making process and had a determinative influence on the outcome." *Reeves v. Sanderson Plumbing Products, Inc., 120 S. Ct. 2097, 2105 (2000) (quotation marks and citations omitted).*

A plaintiff may establish a claim of discrimination under the ADEA by using either direct or circumstantial evidence of discrimination, or by statistical proof. *See Clark v. Coats & Clark, Inc., 990 F.2d 1217, 1226 (11th Cir. 1993).* Direct evidence of discrimination is evidence that, if believed, would prove the existence of a fact in issue without inference or presumption. Id. Only the most blatant remarks, whose intent could be nothing other than to discriminate constitute direct evidence of discrimination. *Bass, 256 F.3d 1105.* "[T]he evidence must indicate that the complained-of employment decision was motivated by the decision-maker's [prejudice]." *Damon v. Fleming Supermarkerts of Fla., 196 F.3d 1354, 1358-59 (11th Cir. 1999) (emphasis in original).* "For statements of discriminatory intent to constitute direct evidence of discrimination, they must be made by a person involved in the challenged decision." *Bass,* 256 F. 3d at 1105 (quotation marks and citation omitted). "[R]emarks by non-decisionmakers or remarks unrelated to the decisionmaking process itself are not direct evidence of discrimination." *Standard v. A.B.E.L. Services, Inc., 161 F.3d 1318, 1330 (11th Cir. 1998).* "If the plaintiff presents direct evidence that a discriminatory animus played a significant or substantial role in the employment decision , the burden shifts to the employer to show that the decision would have been the same absent discrimination." *Eskra v. Provident Life & Accident Ins. Co., 125F.3d 1406, 1411 (11th Cir. 1997).*

Even if the comment that Jones was "too old" for the position of Director of Clean and Beautiful is direct evidence of discrimination, the district court did not err by granting summary judgment. Fulton County a legitimate, nondiscriminatory reason for not selecting Jones for the position of Director of Clean and Beautiful. Specially, the descisionmaker selected another applicant who he believed would perform well in the position, and he did not believe that Jones would perform well due to his lack of experience. Jones failed to present any evidence demonstrating that Fulton County's proffered nondiscriminatory reason for not selecting him was a pretext for discrimination.

G. Injunctive Relief

Jones next argues he established the four requisites for injunctive relief. We review a district court's denial of a preliminary injunction for abuse of discretion, but does not review the intrinsic merits of the case. Haitian Refugee Center, Inc. v. Christopher, 43 F.3d 1431, 1432 (11th Cir. 1995). "Only where the district court misapplies the law will we refuse to defer to its conclusions supporting its denial of relief." Id. "A district court may grant injunctive relief only if the moving party shows that: (1) it has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest. "Siegel v. Lepore, 234 F3.d 1163, 1176 (11th Circ. 2000) (citations omitted).

The district court did not abuse its discretion by denying Jones' various motions for injunctive relief because he failed to satisfy any of the requirements for relief.

II. CONCLUSION

Upon review of the record on appeal an upon consideration of the parties briefs, we discern no reversible error. Accordingly, we affirm the district Court's grant of summary judgment to Fulton County and denial of Jones' various motions for injunctive relief..

AFFIRMED.

1:03-CV-2036-JEC

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

PHILLIP A. JONES SR.
Plaintiff,

v.

Fulton County Government,
Defendant.

May 27, 2004, Decided

COUNSEL:
Phillip A. Jones, Pro Se Counsel, Administrative Coordinator II and Fulton County Official resolving protocol violations within the State of Georgia's Dispute Resolution Programs for civil service employees and Fulton County Government. Initial violations resulted at the first stage of the grievance policies and procedures. These violations continued to the Circuit Courts.

Rolesia Butler Dancy, Senior Attorney & Carmen Alexander, Staff Attorney, Fulton County Government Attorneys.

JUDGES :
Before: DISTRICT JUDGE JULIE E. CARNES & MAGISTRATE ALAN J. BAVERMAN

ORDER:
The above entitled action is presently before the Court on the Magistrate Judge's Report and Recommendation [132] granting defendant's Motion for Summary Judgment [99]. Plaintiff filed objections to the Report and Recommendation on April 5th and 8th, 2004 [133,134]. The Court has reviewed the record and concludes that the Magistrate Judge's Report and Recommendation [132] is recieved with approval and adopted as the opinion and order of the Court.

IT IS HEREBY ORDERED that the Court **ADOPTS** the Magistrate Judge's Report and Recommendation [132] **GRANTING** defendant's Motion for Summary Judgment [99] and **OVERRULING** plaintiff's objections [133, 134].

So ORDERED, this 26th day of MAY, 2004.

JULIE E. CARNES
UNITED STATES DISTRICT JUDGE

1:03-CV-2036-JEC

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

--

PHILLIP A. JONES SR.
Plaintiff,

v.

Fulton County Government,
Defendant.

May 27, 2004, Decided

COUNSEL:
Phillip A. Jones, Pro Se Counsel, Administrative Coordinator II and Fulton County Official resolving protocol violations within the State of Georgia's Dispute Resolution Programs for civil service employees and Fulton County Government. Initial violations resulted at the first stage of the grievance policies and procedures. These violations continued to the Circuit Courts.

Rolesia Butler Dancy, Senior Attorney & Carmen Alexander, Staff Attorney, Fulton County Government Attorneys.

JUDGES :
Before: DISTRICT JUDGE JULIE E. CARNES & MAGISTRATE ALAN J. BAVERMAN

JUDGMENT:

This action having come before the court, Honorable Julie E. Carnes, United States District Judge, for consideration of the Magistrate Judge's report and recommendation as to defendant's motion for summary judgment, and the court having adopted said recommendation and granted said motion, it is .

Ordered and Adjudged that the plaintiff take nothing; that the defendant recover its costs of this action, and the action be, and the same hereby, is **dismissed.**

Dated at Atlanta, Georgia, this 27th day of May, 2004.

LUTHER D. THOMAS
CLERK OF COURT

By: Frances M. McNulty, Deputy Clerk

Prepared, filed , and Entered
in the Clerk's Office
May 27, 2004
Luther D. thomas
Clerk of Court

1:03-CV-2036-JEC

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

--

PHILLIP A. JONES SR.
Plaintiff,

v.

Fulton County Government,
Defendant.

May 27, 2004, Decided

COUNSEL:

Phillip A. Jones, Pro Se Counsel, Administrative Coordinator II and Fulton County Official resolving protocol violations within the State of Georgia's Dispute Resolution Programs for civil service employees and Fulton County Government. Initial violations resulted at the first stage of the grievance policies and procedures. These violations continued to the Circuit Courts.

Rolesia Butler Dancy, Senior Attorney & Carmen Alexander, Staff Attorney, Fulton County Government Attorneys.

JUDGES :

Before: DISTRICT JUDGE JULIE E. CARNES & MAGISTRATE ALAN J. BAVERMAN

ORDER FOR SERVICE OF REPORT AND RECOMMENDATION:

Attached is the Report and Recommendation of the United States Magistrate Judge made in accordance with 28 U.S.C § 636 (b)(1), FED. R. CIV. P. 72(a), and this Court's Local Rule 72.1(B). Let the same be filed and a copy, with a copy of this order, be served upon counsel for the parties.

Pursuant to 28 U.S.C. § 636 (b)(1), each party may file written objections, if any, to the Report and Recommendation within ten (10) days of receipt of this Order. Should objections be filed, they shall specify with particularity the alleged error(s) made (including reference by page number to any transcripts if applicable) and shall be served upon the opposing party. The party filing objections will be responsible for obtaining and filing the transcript of any evidentiary hearing for review by the District Court. If no objections are filed, the Report and Recommendation may be adopted as the opinion and order of the District Court and any appellate review of factual findings will be limited to a plain error review. *United States v. Slay, 714 F.2d1093 (11th Cir. 1983), cert. denied, 464 U.S. 1050 (1984).*

The Clerk is directed to submit the Report and Recommendation with objections, if any, to the District Court after expiration of the above time period.

IT IS ORDER, this the 31st day of March, 2004.

ALAN J. BAVERMAN
UNITED STATES MAGISTRATE JUDGE

UNITED STATES MAGISTRATE JUDGE'S FINAL REPORT AND RECOMMENDATION

This matter is now before the Court on the motion for summary judgment filed by Defendant Fulton County. [Doc.99]. In this employment discrimination action, Plaintiff Phillip Jones has asserted causes of action against his employer, Defendant Fulton county, for race discrimination, age discrimination, retaliation, and sexual harassment, pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq. Defendant has now moved for summary judgment on all of his claims. For reasons explained herein, the undersigned Magistrate Judge hereby **RECOMMENDS** that Defendant's motion be **GRANTED.**

I. Summary judgment standard

Federal Rule of Civil Procedure 56 provides that summary judgment shall be "rendered forth if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. Civ. P. 56(c). The party moving for summary judgment bears the initial burden of "informing the court of the basis for its motion and of identifying those materials that demonstrate the absence of a genuine issue of material fact. " Rice-Lamar v. City of Fort Lauderdale, 232 F.3d 836, 840 (11th Cir. 2000) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The non-moving party then "may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as

otherwise provided in [Rule 56], must set forth specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56 (e). If in response the non-moving party does not sufficiently support an essential element of his case as to which he bears the burden of proof, summary judgment is appropriate. Rice-Lamar, 232 F.3d at 840 (citing Celotex, 477 U.S. at 323). "In determining whether genuine issues of material fact exists, [the Court] resolve[s] all ambiguities and draw [s] all justifiable inferences in favor of non-moving party." id. (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986)).

II. Facts of the case

The pertinent facts of this case at the summary judgment stage, construed in the light most favorable to Plaintiff as the non-moving party, are as follows:

Plaintiff Phillip A. Jones, who is 47 years old, began working with Defendant Fulton county on July 21, 1986, in the Department of Public Working as an Engineering Assistant III. (D¶ 1).[1] Around December 1993, Plaintiff was promoted to Assistant

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[1] Paragraph numbers preceded by "D" refer to paragraphs in "Defendant's Statement of Material Facts To Which There Is No Genuine Issue To Be Tried." Most of Defendant's factual assertions are deemed to be admitted because Plaintiff has not rebutted them in his response by directing the Court to admissible evidence in the record. Most of his responses are merely his own unsworn narrative explanations.

Local Rule 56.B(2) (N.D.Ga) provides that "[t]he respondent to a motion for summary judgment shall attach to the response a separate and concise statement of material facts, numbered separately, to which the respondent contends there exists a genuine issue to be tried. Response should be made to each of the movant's numbered material facts. All material facts contained in the moving party's statement which are not specifically controverted by the respondent in respondents' statement shall be deemed to have been admitted."

Furthermore, Local Rule 56.1B(3) (N.D.Ga.) requires that "[a] ll documents and other record materials relied upon by a party moving for or opposing a motion for summary judgment shall be clearly identified for the court." this Court has also previously held that statements of fact supporting and opposing summary judgment motions must cite to evidence in the record or else they will not be considered and, specifically, that non-moving parties' responses to factual assertions must cite to record evidence and cannot be naked denials. *Garland v. Advanced Medical Fund, L.P., II, 86 F. Supp. 2d 1195, 199-1200 & n.4 (N.D.Ga. 2000).*

Director of Inspections and Permits. (D¶ 2).

In 1995, the Fulton County government contracted with the Arizona consulting firm of Fox Lawson & Associates to conduct a county-wide pay and classification study of the county's workforce. (D ¶ 3). Fox Lawson used the Decision Band method to evaluate and determine the appropriate pay and job classification for each employee. (D¶4). The Decision Band method is a tool used to analyze the essential duties and responsibilities of each county

employee based on a Position Description Questionnaire ("PDQ") submitted by each individual employee. (D¶5).

Around February 1997, as a result of the independent study conducted by Fox Lawson, Defendant notified Plaintiff that his position as an Assistant Director was reclassified to a Code Enforcement Coordinator, C42. (D¶ 7). Plaintiff appealed this reclassification and exhausted the appeals process provided for reclassifications implemented under Fox Lawson. (D¶¶ 8-9). In response to his appeal, the Personnel Department conducted a "desk audit"" which concluded that Plaintiff's duties were more appropriately classified under the new Fox Laswon classification system as Administrative Coordinator, C42, and not Code Enforcement Coordinator, C42. (D¶¶ 10-11).

Plaintiff's reclassifcation under the new classification system resulted in an increase in salary. (D¶ 12). Even though Plaintiff no longer held the title of Assistant Director, the essential duties that he was performing did not change. (D¶ 13).

It appears from the record that around February 2001 Plaintiff was transferred to a satellite office in Alpharetta, Georgia.[2]

In July 2002, Plaintiff applied for the position of Director of Clean and Beautiful Program. Steve Cover, the Director of the Department of Environment and Community Development, convened a selection committee to interview for the position. (D¶ 39). The committee was comprised of Dr. James Fason, Deputy Director of the Department of Environment and Community Development, and Christina DuPree, Assistant Director of Environmental Affairs. (D¶

40). the committee interviewed Plaintiff in August 2002. (D¶ 41). Plaintiff asserts that , while

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2 In its statement of facts, Defendant asserts a number of details about Plaintiff's transfer to Alpharetta and the events leading up to it. In doing so, Defendants relies upon the affidvits testimony of Joseph Warfel. Plaintiff has objected to much of this testimony of Joseph Warfel. Plaintiff has objected to much of this testimony as inadmissible hearsay. Mr. Warfel's testimony on this subject is pure hearsay. He refers to conversations between and statements by other people, and nowhere in the affidavits does he indicate that he has any personal knowledge of the events decribed other than the vague, general staement that he is "fimiliar with Phillip Jones's employment history with Fulton County". There is not indication that is is a "financial system manager". he just frequently preequently prefaces his asertions with "It is my understanding that..." Accordingly, the undersigned Magistrate Judge **SUSTAINS** Plaintiff's objection.

interviewing him for the job, Dr. Fason said that he was "too old for the position".(Dexh.1). [3]

They also interviewed approximately twenty other applicants. (D¶ 43). After interviewing the applicants, Dr. Fason and Ms. DuPree allegedly considered Corlete Dennard to be the most qualified for the position. (D ¶ 45).

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3 Plaintiff does not appear to have directed the Court to admissible evidence containing this assetion of fact. Defendant nevertheless has pointed the Court to this allegation in Plaintiff;f EEOC charge of discrimination, and Defendant does not seem to contest it.

Dr. Fason then recommended to Mr. Cover that she be selected for the position. (D¶ 46). Upon reviewing all of the candidates and Dr. Fason's recommendation, Mr. Cover selected Ms. Dennard for the position. He allegedly believed that, out of all the applicants, she would perform the job well. (D¶ 47). Mr. Cover has testified that he did not select Plaintiff because he did not believe that Plaintiff had the relevant experience to perform well in the position. (D¶ 48).

Plaintiff was approximately 46 years old when he applied for the Executive Director position. Ms. Dennard was 39 years old at the time of being selected for the position. (D¶ 49).

On November 15, 2002, while at a retirement party held in the conference room at the Alpharetta office, another employee walked up behind Plaintiff, grabbed both of his arms, pulled them back behind his back, and rubbed plaintiff on his buttocks, saying, among other things, something about "fucking in the ass." (D ¶ 20).[4] Plaintiff identified this person as Mustafa Bey, who is a Senior Building Inspector in the Inspections Division of the Department of Environment and Community Development. (D¶ ¶ 21-22). Plaintiff and Mr. Bey did not really know each other. (D¶ ¶ 23).5

Later on the day the incident , Plaintiff called Dr. Fason but instead spoke to his immediate supervisor, Suzanne Moss. (D¶ 26). Ten days later, on November 25, 2002, Plaintiff filed a formal written complaint with the Fulton County Office of Equal Employment Opportunity ("OEOO") to report the incident. (D¶ 27; Warfel aff., exh. 1). The OEOO apparently then conducted an investigation , interviewing Plaintiff and other employees whom he identified as witnesses. (D¶ 28; Warfel aff., exh. 1). It concluded that "

[b]ased on the information available for review, there is insufficient evidence to establish a violation of Title VII. However, there was significant information disclosed that indicated that there are perceptions of other human relations challenges that involve the working relationships between the Complainant, co-workers and management. Department of Environment management should evaluate this information and determine a strategy to improve the working relationships of all involved." (Warfel aff., exh.1).

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[4] The summary of the investigation conducted by the Fulton County Office of Equal Employment Opportunity indicates that Mr. Bey said: "If we were in prison I would fuck you in the ass." (Warfel aff., exh. 1).

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[5] Defendant also relies on the affidavit testimony of Mr. Warfel in regard to further details of the relationship between Plaintiff and Mr. Bey and the investigation into the November 15, 2002, incident, For the same reasons explained in footnote 2 above, however, the undersigned **SUSTAINS** Plaintiff's objection to the testimony as it is inadmissible hearsay.

At some point, either before or after the November 15, 2002, incident, Plaintiff requested a transfer out of the Alpharetta office. He apparently was transferred on December 1, 2002, back to Defendants central administrative offices on a temporary basis. (See D¶¶ 32-33 and P's response thereto). He was permanently transferred back there in January 2003. (D¶ 38).[6]

On or about December 19, 2002, Plaintiff submitted a charge of discrimination to the Equal Employment Opportunity Commission ("EEOC"), alleging sex and age discrimination and retaliation in violation of Title VII. In his charge, he referenced the November 2002 incident and his failure to be promoted in August and September 2002. (Dexh. 1).

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Although Defendant's statement of facts indicates that Plaintiff was permanently transferred back in January 2002, it appears that it must have been in January 2003.

III. Plaintiff's race discrimination claim

Although the nature of Plaintiff's claim is not exactly clear, he appears to allege that he was demoted / reclassified from an assistant director position to a code enforcement coordinator position in 1997 based on his race. Tittle VII of the Civil Rights Act of 1964 makes it unlawful for an employer " to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1).

As a general rule, however, a Title VII plaintiff may only pursue in federal court those claims of discrimination that he has previously raised in his charge of discrimination before the EEOC. *Chanda v. Englehard/ICC,234F.3d 1219, 1224-25 (11th Cir. 2000).* Excepted from this rule, however, are claims omitted from the EEOC charge that are reasonably related to those claims raised before the EEOC. Id. The omitted claims are reasonably related if the EEOC's

investigation could reasonably have been expected to include them based on the information in the charge of discrimination. *Plaisance v. Travelers Ins. Co., 880 F. Supp. 798, 807, (N.D. Ga. 1994); Sanchez v. Standard Brands, Inc., 431 F. 2d 455, 466 (5th Cir. 1970).*[7] The Eleventh Circuit has held: "Judicial claims [not raised in the underlying EEOC charge] which serve to amplify, clarify, or more clearly focus earlier EEO complaints are appropriate. Allegations of new acts of discrimination, offered as the essential basis for the requested judicial review are not appropriate." *Wu v. Thomas, 863 F. 2d 1543m 1547 (11th Cir. 1989).* Another appellate court has explained: "The claims are not alike or reasonably related unless there is a factual relationship between them. This means that the EEOC charge and the complaint must, at minimum, describe the same conduct and implicate the same individuals." *Cheek v. Western & Southern Life Ins. Co., 31 F.3d 487, 501 (7th Cir. 1994) (emphasis in original) (quoted in White v. Well Fargo Guard Servs., 908 F. Supp. 1570, 1581 (M.D. Ala. 1995)).*

Furthermore, "Title VII states that '[a] charge under this section shall be filed within one hundred eighty days after the alleged unlawful employment practice occurred...'42 U.S.C. § 2000e-5(e). In the Eleventh Circuit, a plaintiff's claims are barred if not filed with the EEOC within 180 days of the discriminatory act.

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[7] The Eleventh Circuit Court of Appeals has adopted as binding precedent all decisions of the Fifth Circuit court of Appeals handed down on or before September 30, 1981. Bonner v. City of Prichard, 661 F. 2d 1206, 1207 (11th Cir. 1981).

Ross v. Buckeye Cellulose Corp., 980 F. 2d 648, 662 (11th Cir. 1993)." Butler v. Matsushita Communication Indus. Corp., 203 F.R.D. 575, 582 (N.D. Ga. 2001).

Here, Defendant argues that Plaintiff's disparate treatment race discrimination claim is barred because he did not raise race discrimination before the EEOC and because, even if he had, the claim still would have been untimely in that he filed his charge of discrimination more than 180 days after the allegedly discriminatory act. The undersigned agrees on both counts.

Plaintiff's EEOC charge makes no mention at all of either race discrimination or his demotion /reclassification in 1997. It alleges only sex and age discrimination and retaliation involving the alleged sexual harassment incident in 2002 and his failure to be promoted to other positions he applied for in 2002. The EEOC's investigation of the alleged 2002 sexual harassment and the 2002 decision regarding the executive director position could not reasonably have been expected to include his omitted claim of race discrimination in the Fox Lawson reclassification of 1997. See Plaisance, 880 F. Supp. at 807; Sanchez, 431 F.2d at 466. As a result, Plaintiff has not exhausted his administrative remedies regarding the 1997 reclassification, and his race discrimination claim regarding it is now barred.

Furthermore, as Defendant argues, even if Plaintiff's EEOC charge could somehow he construed to include an allegation of race discrimination in 1997, that allegation would have been untimely as it would have come five years after the alleged act of discrimination. The statute of limitations for filing the EEOC charge is 180 days.

Accordingly, there is no genuine issue of material fact to be tried, and Defendant is entitled to judgment as a matter of law on Plaintiff's claim of race discrimination. the undersigned Magistrate Judge **RECOMMENDS** that Defendant's motion for summary judgment be **GRANTED** as to that Claim.

IV. Plaintiff's sexual harassment claim

Plaintiff also asserts that he was subjected to sexual harassment when he was allegedly attacked by a co-worker at an office party. Sexual harassment in the workplace also violates Title VII's prohibition on gender discrimination. *See Faragher v. City of Boca Raton, 524 U.S. 775, 786 (1998) (discussing Title VII's prohibition on severe or pervasive harassment based on prohibited factors, including sex, race and national origin).* A Plaintiff asserting a harassment claim must show that (1) he is a member of a protected class; (2) he has been subject to unwelcome harassment; (3) the harassment was based on his membership in the protected class; (4) the harassment was sufficiently severe or pervasive such that it altered the terms and conditions of his employment and created a discriminatorily abusive working environment; and (5) there is a basis for holding his employer liable. See *Johnson v. Booker T. Washington Broadcasting Serv., Inc., 234 F.3d 501, 508 (11th Cir. 2000) (outlining elements of sexual harassment claim).*

Here, it undisputed that, as a male, Plaintiff is a member of a protected class and that he was subjected to unwelcome harassment in the workplace. Defendant contends, however, that he cannot establish that the harassment was based on his sex, that it was objectively

severe or pervasive, or that there is any basis for holding Defendant liable for the actions of Mr. Bey.

The undersigned Magistrate Judge finds that even assuming that Mr. Bey's bizarre actions at the retirement party were based on,[8] they were not objectively

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[8] In its landmark decision in *Onclave v. Sundowner Offshore Servs., Inc., 523 U.S. 75(1998),* the Supreme Court confirmed that Title VII creates a cause of action for sexual harassment where the harasser and the victim are both of the same gender. In its unanimous decision, the Court held, though, that "Title VII does not prohibit all verbal and physical harassment in the workplace; it is directed only at 'discrimination....because of ...sex" and that "[w]e have never held that workplace harassment, even harassment between men and women, is automatically discrimination because of sex merely because the words used have sexual content or connotations." *Id.* at 80 (emphasis in original). To the contrary, "[t]he critical issue, Title VII's text indicates, is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed." *Id.* (*quoting Harris v. Forklift Sys., Inc., 510 U.S. 17, 25 (1993) (Ginsburg, J., concurring)).* The Court went onto instruct.

But harassing conduct need not be motivated by sexual desire to support an inference of discrimination on the basis of sex. A tier of fact might reasonably find such discrimination, for example, if a female victim is harassed in such sex-specific and derogatory terms by another woman as to make it clear that the harasser is motivated by general hostility to the presence of women in the workplace. A same-sex harassment plaintiff may also, of course, offer direct

severe or pervasive (although Plaintiff may have subjectively perceived them to be).

In order to establish that harassment is sufficiently severe or pervasive to violate Title VII, a plaintiff must show not only that he subjectively perceived it to be hostile and abusive by also that a reasonable, objective person would as well. Gupta v. Florida Board of Regents, 212 F.3d 571, 583 (11th Cir. 2000). In determining whether the conduct was objectively hostile and abusive, courts consider the following four factors:"(1) the frequency of the conduct; (2) the severity of the conduct; (3) whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and (4) whether the conduct unreasonably interferes with the employee's job performance." ID. at 584. See also Faragher, 524 U.S. at 787-88 (outlining same factors for determining whether work environment is objectively hostile and abusive).

It is undisputed that the conduct alleged here was not

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comparative evidence about how the alleged harasser treated members of both sexes in a mixed-sex workplace. Whatever evidentiary route the plaintiff chooses to follow, he or she must always prove that the conduct at issue was not merely tinged with offensive sexual connotations, by actually constituted "discrimination...because of ...sex."

Id. at 80-81 (emphasis in original).

"In proving a claim for a hostile work environment due to sexual harassment, therefore, the plaintiff must show that but for the fact of her sex, she would not have been the object of harassment." *Henson v. City of Dundee, 682 F.2d 897, 904 (11th Cir. 1982).*

frequent; it only happened once. There also is no evidence that this one-time event interfered with Plaintiff's job performance. While Mr. Bey's behavior was clearly inappropriate and unprofessional and one can see why it would caused some embarrassment to Plaintiff, there is no evidence that it was actually physically threatening or humiliating.

As for the severity prong of the analysis , as the United States District Court for the Southern District of Georgia explained in *Breda v. Wolf Camera, Inc., 148 F.Supp. 2d 1371, 1376 (S.D. Ga. 2001),* adjudicating fact-specific sexual harassment cases often leaves federal courts in the unfortunate position of "decid[ing] what is' sufficiently severe' by resorting to ' crudity comparable.' That is, judges must compare the crudity and 'lewdity' found in one case with that deemed sufficient to survive a Rnle 50 or 56 motion in another." Having done so here, the undersigned concludes that Plaintiff's allegations do not rise to the level of severe or pervasive as that standard has been defined within the Eleventh Circuit.

In *Medoza v. Borden, Inc., 195 F. 3d 1238 (11th Cir. 1999),* for example, the Eleventh Circuit Court of Appeals, sitting en banc, found the plaintiff-employee's allegations of sexual harassment not to be sufficiently severe to pervasive even though her supervisor had told her, "I'm getting fired up," had rubbed his hip against hers while touching her shoulder and smiling on one occasion, had twice made sniffing noises while looking at her groin area, had sniffed at her on another occasion. and "constantly" followed her and stared at her in a "very obvious fashion." Id. at 1242-43, 1247-48. Similarly in Gupta, supra, the Eleventh Circuit affirmed summary judgment for the defendant -employer

where the plaintiff's supervisor had, inter alia, invited her to lunch at Hooters restaurant, told her she was beautiful, called her at home and asked whether she was in bed, stared at her, repeatedly asked her to lunch touched jewelry she was wearing, unzipped his pants and tucked his shirt in her presence, touched the hem of her dress, and touched her on the knee.

Mr. Bey's alleged behavior here is of a somewhat similar nature to that of the alleged harassers in Mendoza and Gupta and, based on the holdings of the Court of Appeals in those cases, does not constitute sufficiently severe or pervasive harassment to support a federal claim of sexual harassment. the undersigned magistrate Judge, therefore, finds that there are not genuine issues of material fact to be tired regarding Plaintiff's Title VII sexual harassment claim and therefore **RECOMMENDS** that the Defendant's motion for summary Judgment be **GRANTED** as to that claim.

V. Plaintiff's retaliation claim

Plaintiff also raised a claim for retaliation, the nature of which is not at all clear. Title VII also makes it an unlawful employment practice for an employer to, inter alia, discriminate against an employee "because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." 42 U.S.C. § 2000e-3(a). These two prohibitions on retaliation are generally known as the opposition clause and the participation clause, respective. *EEOC v. Total Sys. Servs., Inc., 221 F.3d 1171, 1174 (11th Cir. 2000).*

When relying on circumstantial evidence, a plaintiff asserting a claim of retaliation in violation of Title VII must establish a prima facie case by showing "(1) that he engaged in statutorily protected expression; (2) that he suffered an adverse employment action; and (3) that there is some causal relationship between the two events." *Holifield v. Reno, 115 F. 3d 1555, 1566 (11th Cir. 1997).* He is not required to prove the underlying claim of discrimination that led to his protected activity, but he "must have had a reasonable good faith belief that the discrimination existed." Id. If the plaintiff establishes the prima facie case, an inference of discrimination arises, and the burden shifts to the defendant to articulate a legitimate, non-discriminatory reason for its action. This burden is "exceedingly light." *Id.* at 1564. If the defendant does so, this inference of discrimination is erased, and the burden shifts back to the plaintiff to show that the defendant's articulated reason is merely a pretext for retaliation. Id. at 1566. Despite this burden-shifting framework the "ultimate burden of persuading the tier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff." *Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981).*

Here, in response to Defendant's motion, Plaintiff has not directed the Court to any admissible evidence showing that or even explained to the Court how he engaged in any statutorily protected expression under Title VII prior to receiving an adverse employment action. As a result, he cannot make out even a prima facie case of retaliation; there is no genuine issue of material fact to be tired; and Defendant is entitled to judgment as a matter of law in regard to his retaliation claim. Accordingly, the undersigned Magistrate Judge hereby **RECOMMENDS** that Defendant's motion for summary judgment be **GRANTED** as to that claim.

VI. Plaintiff's age discrimination claim

Plaintiff finally alleges that he was discriminated against based on his age when he was not promoted to an executive director position. The Age Discrimination in Employment Act ("ADEA") makes it unlawful for an employer, inter alia, "to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's age." 29 U.S.C. § 623 (a)(1). The Eleventh Circuit Court of Appeals has held that the same " principles governing the order and allocation of proof in cases arising under Title VII" apply to claims arising under the ADEA as well. *Walker v. nationsBank of Fla. N.A., 53 F. #d 1548, 1556 (11th Cir. 1995).*

Here, the initial question is whether Dr. Fason's alleged statement the Plaintiff was "too old for the position" constitutes direct evidence of age discrimination. there can be no doubt that it would if Dr. Fason were the final decisionmaker. The record indicates, however, that he made a recommendation, along with Ms. DuPree, to Mr. Cover, who then made the final decision to hire ms. Dennard rather that Plaintiff. As a result, the undersigned finds that this statement does not constitute direct evidence as defined by the Eleventh Circuit.

Direct evidence is "evidence which, if believed , would prove the existence of discrimination without inference or presumption." *Holifield, 115F.3d at 1561 (quoting Carter, 870 F.2d at 581-82).* "[o]nly the most blatant remarks, whose intent can be nothing other than to discriminate on the basis of [age]...constitute direct evidence of discrimination." *Bass*

v. Board of County Commissioners, 256 F. 3d 1095, 1105 (11th Cir. 2001) (quoting Damon v. Fleming Supermarkets of Fla., Inc., 196 F. 3d 1354, 1358 (11th Cir. 1999)). Evidence that only suggests discrimination or that is subject to more than one interpretation does not constitute direct evidence. *Merrit v. Dillard Paper Co., 120 F.3d 1181, 1189 (11th Cir. 1997).* The Eleventh Circuit has found direct evidence where "actions or statements of an employer relect[] a discrimination or retaliatory attitude correlating to the discrimination or retaliation complained of by the employee." *Id. (quoting Caban-wheeler v. Elsea, 904 F. 2d 1549, 1555 (11th Cir. 1990)).* "For statements of discriminatory intent to constitute direct evidence of discrimination, they must be made by a person involved in the challenged decision." *Id. (quoting Trotter v. Board of Trustees, 91 F. 3d 1449, 1453-54 (11th Cir. 1996)).*

Although Dr. Fason was involved in the challenged decision, he did not make the final decision. As a result, his statement is not "evidence which, if believed, would prove the existence of discrimination without interference or presumption." *Holifield, 115F.3d at 1561 (quoting Carter, 870 F2d at 581-82).* One must make an inference or presumption to conclude that Mr. Cover did not choose Plaintiff because Dr. Fason told Plaintiff he was "too old for the position." While Plaintiff is entitled to the benefit of all inferences at this stage the proceeding, still there has to be some evidence that Dr. Fason's statement was conveyed to the decision-maker for Plaintiff to obtain the benefit of an inference that the adverse employment action was based on an improper consideration.

Although neither party addressed this issue, Dr. Fason's statements raise what is called in Eleventh Circuit Title VII jurisprudence the "cat's paw' theory." As a general proposition, an adverse employment decision may be actionable if an employee proves that the recommendation directly resulted in the adverse employment action. See *Zaklama v. Mt. Sinai Medical Center, 824 F. 2d 291, 294 (11th Cir. 1988).* However, as the Eleventh Circuit has explained, this causation must be truly direct. The plaintiff must prove that the discriminatory animus behind the recommendation was the actual cause of the decision - maker's employment action. *Llampallas v. Mini-Circuits, lab., Inc., 163 F.3d 1236, 1248 (11th Cir. 1998).* One way of proving that the discriminatory animus behind the recommendation cause the adverse employment decision is under the so-called " cat's paw" theory. this theory provides that causation may be established if the plaintiff shows that the decision-maker followed the biased recommendation without conducting an independent investigation. In such a case, the recommender is using the decision-maker as a mere conduit, or "cat's paw," to give effect to the recommender's discriminatory animus. *Id.* at 1249.

There is no such evidence in this case. The evidence is not disputed that Mr. Cover conducted an independent. In addition to receiving Dr. Fason's and Ms. DuPree's recommendation, he reviewed all the candidate. He expressly has stated his reasons for selecting Ms. Dennard over Plaintiff, none of which supports a reliance on Dr. Fason's alleged discriminatory animus. Therefore, there is no evidence that could reasonably indicate that Dr. Fason's allegedly discriminatory animus influenced Mr. Cover's decision not to offer Plaintiff the position in question. *Stimpson v. City of Tuscaloosa, 186 F. 3d 1328, 1332 (11th Cir. 1999).*

The case, then, must be analyzed pursuant to the Mc Donnell Douglas / Burdine burden - shifting paradigm for employment discrimination cases based on circumstantial evidence. As explained above in regard to Plaintiff's Title VII retaliation claim, a plaintiff in an ADEA case generally must first establish a prima facie case. If he does so, the defendant then must rebut the raised presumption of discrimination by articulating a legitimate, non-discriminatory reason for its decision. If the defendant does so, the burden then shifts back to the plaintiff to show that the defendant's stated reason is pretextual.

Defendant concedes for purpose of the summary judgment motion that plaintiff can establish a prima facie case of age discrimination. A burden of production, therefore, shifts to Defendant to articulate a legitimate, non-discriminatory reason for ifs decision not select him for the executive director position in 2002.[9] In response to this burden, Defendant has explained that Mr. Cover "selected Dennard because he believed she would perform well in the position... He did not believe Plaintiff would perform well in the position because he did [not] have much experience.' ("Defendant's Brief in Support of Its Motion for Summary Judgment." p.27) (citing Cover aff., ¶ 8). Mr. Cover has testified more specifically in his affidavit as follows:

I hired Collette Dennard. She was the most qualified for the position and I felt she would perform well in the position. Dennard demonstrated extensive experience and knowledge in the areas of current environmental laws, methods or project management, coordination of environmental research programming and facilitating community meetings'

I did not select Phillip Jones because I did not believe he would perform well in the position. Specifically, Plaintiff did not have much experience in the areas he claimed to have experience. For example, when asked by the selection committee to explain his experience in the areas of 1) conducting environmental research; 2) managing environmental projects; 3) facilitating community meetings and program budgeting, Jones repeatedly referred to his participating in " creating the Department of Environment," but he was not able to provide any examples of past work experience that would legitimately qualify his understanding and kownledge of the areas environmental research, project management, community meeting facilitation or program budgeting. Additionally, I was concerned with Jones' people skills and leadership skills.

(Cover aff., ¶¶ 8-9). This clearly satisfies Defendant's "exceedingly light" burden .

A burden of persuasion would then return to Plaintiff to establish (or at least shown a genuine issue of material fact as to whether) that explanation is pretexual. "Provided that the proffered reason is one that might motive a reasonable employer, an employee must meet that reason head on and rebut it, and the employee cannot succeed by simply

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[9] Plaintiff also appears to allege that he was also not selected for two other positions based on his age at the same time he was not selected for this executive director position. Because both parties seem to consider the decision-making for all three positions to have been essentially consolidated, the undersigned will address all three at once by using the evidence that expressly relates to the executive director job.

quarreling with the wisdom of that reason." Chapman v. AI Transport, 229 F. 3d 1012, 1030 (11th Cir. 2000) (citing Alexander v. Fulton County, 207 F.3d 1303, 1341 (11th Cir. 2000)). Plaintiff, however, has not done that. He has not directed the Court to any evidence indicating that Mr. Cover's specific assertions are not accurate. The only evidence the undersigned finds in the record that might even arguably point to pretext is Dr. Fason's alleged statement about Plaintiff's age, but again, the statement by Dr. Fason, in the absence of further evidence, does not contradict the specific reasons given by Mr. Cover for his decision.

Accordingly, the undersigned Magistrate Judge finds that there is no genuine issue of material fact to be tried and that Defendant is entitled to judgment as a matter of law as to ADEA age discrimination claim. The undersigned therefore **RECOMMENDS** that Defendant's summary judgment motion be **GRANTED** as to that claim.

The Clerk of Court is **DIRECTED** to withdraw the reference to the undersigned Magistrate Judge.

IT IS SO RECOMMENDED and **DIRECTED**, this the 31st day of March, 2004.

ALAN J. BAVERMAN
UNITED STATES MAGISTRATE JUDGE

WARRANT NO. 03W00744

ALPHARETTA POLICE DEPARTMENT NO. 0212-0361

MUNICIPAL COURT OF ALPHARETTA, GEORGIA

GEORGIA, FULTON COUNTY STATE OF GEORGIA

VS.

MUSTAFA BEY
Accused

AFFIDAVIT

Personally appeared the undersigned prosecutor, Phillip A. Jones who on oath says that, to the best of his knowledge and belief, the above-stated accused, between the hours of 1200 p.m. on the 18th day of December and 1300 p.m., on the 18th day of December 2002, did commit the offense of Simple Battery in violation of O.C.G.A. 16-5-23 at 301 South Main St., Alpharetta, Georgia 30004, City of Alpharetta, Fulton County, Georgia, and against Phillip A. Jones and the laws of the State of Georgia. The facts upon which this affidavit for arrest are based as follows:

While at a farewell party of a fellow employee the suspect Mr. Bey came up behind him, grabbed his arms and pulled them behind his back with force with intent to harm. and prosecutor makes this affidavit that a warrant may be issued for the accused's arrest.

Sworn and subscribed before me this 8th day of August, 2003. Phillip A. Jones Before Rita Combs Notary Municipal Court of Alpharetta.

STATE WARRANT FOR ARREST

To any sheriff, Deputy sheriff, Coroner, Constable or Marshal of this State - Greetings: For sufficient cause made known to me in the above affidavit, incorporated by reference herein, and other sworn testimony, you are hereby commanded to arrest the accused, Mustafa Bey named in the above affidavit, charged by the prosecutor therein with the above offense against the laws of this State at the time, place and manner named in the above affidavit, and bring the accused before me or some other judicial Officer of this State to be dealt with as the law directs. Herein fail not,

This 8th day of August 2003.

Judge, Municipal Court of Alpharetta

ORDER FOR BOND

IT IS ORDERED that the aforesaid accused, Mustafa Bey be and he is hereby granted bail to be made with sufficient surety in the amount of Fifteen Hundred * (day sign own Bond) Dollars ($1,500.00) to assure the presence of said accused at his arraignment, trail and final disposition in the assigned Court of Fulton County, Georgia.

Witness my hand and seal, this 8th day of August 2003. *Def. no Contact w/ Mr. Jones.

Judge, Municipal Court of Alpharetta

IN THE
SUPREME COURT OF THE UNITED STATES

PHILLIP A. JONES SR.
Petitioner
v.
FULTON COUNTY GOVERNMENT
Respondent (s)

PROOF OF SERVICE

I, Phillip A. Jones Sr., do swear or declare that on this date, April 30, 2005, as required by Supreme Court Rule 29, I served the enclosed PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or delivery to a third-party commercial carrier for delivery within 3 calendar days.

Fulton County Attorrney
Rolesia Butler Dancy, Senior Attorney
141 Pryor Street S.W., Suite 4001
Atlanta, Georgia 30303

I declare under penalty of perjury that the foregoing is true and correct.

Phillip A. Jones Sr.
Pro Se Counsel

Supreme Court, U.S.
FILED
OCT 28 2005
OFFICE OF THE CLERK

No. 04-1519

IN THE

Supreme Court of the United States

_____ Term, 2005

PHILLIP A. JONES SR.,

Petitioner,

v.

FULTON COUNTY GOVERNMENT,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR REHEARING

PHILLIP A. JONES SR.
COUNSEL OF RECORD
557 LYNN VALLEY ROAD S.W.
ATLANTA, GEORGIA 30311
(770) 306 - 4737

QUESTIONS PRESENTED

1. Should Fulton County Government, Georgia be allowed to ignore Title VII of the Civil Rights Act of 1964?

LIST OF PARTIES
AND CORPORATE DISCLOSURE STATEMENT

All of the parties to the proceedings are named in the caption except the below.

1. Fulton County Department of Environment And Community Development.

2. Fulton County Office of County Manager

3. Fulton County Personnel Department

TABLE OF CITED AUTHORITIES

Cases

Donaldson v. Clark, 78 6F. 2d. 1570, 1575 (11th Cir. 1986) 10
Griffith v. Wainwright, 77 2F. 2d. 822, 825 (11th Cir. 1985) 9
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Powell v. First National Bank and Trust, 58 Ga. App. 648, 199 S.E. 668 (1938); 31 C.J.S. Evidence, § (3) (a).....9
Watson v. Blue Inc. 324 F. 3d. 1252 (11th Cir. 2003).....4

Statutes/Constitutional Provisions

28 U.S.C. § 2101(e).....1
28 U.S.C. § 1254 (1), (2).....1
28 U.S.C. § 636 (b) (1).....9
42 U.S.C. § 2000 - 2000e.....1,7
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Fed. R. Civ. P. 902 (1),(2),(8).....9
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Other Authorities

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State of Georgia Legislature (OCGA - 45- 20 - et.al.).....3,4

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ARBITRATION OPINION AND AWARD (05-05-05)..... 1a

Petitioner, Phillip A. Jones Sr., respectfully prays that a petition for rehearing for grounds of intervening circumstances of substantial and controlling effect was not previously presented to the Court showing federal arbitration is now final and the merits will alter the decision, "In the Matter in Arbitration Between Phillip A. Jones Sr. Grievant and Fulton County Government, Department of Environment And Community Development, Employer, Opinion and award, Written Warning Letter." Fulton County Government did not have cause to give Jones a warning letter, suspend Jones without cause nor, Fulton County did not have cause for a Fitness for Duty evaluation without written reasons of particularity. The Court is respectfully requested to hear the new evidence relating to constitutional violations within due process within Title VII violations this court has supervisory protocol.

OPINIONS BELOW

The Arbitration Opinion and award, Written Warning Letter (05-05-05) is reprinted.

STATEMENT OF JURISDICTION

A petition for a writ of certiorari was denied on 10/3/05. The judgment of the Eleventh Circuit was initially entered on December 14, 2004. A timely petition for rehearing was denied on February 4, 2005. This Court has jurisdiction under 28 U.S.C § 2101(e) and 28 U.SC. § 1254 (1), (2).

STATUTORY PROVISIONS INVOLVED

This petition involves the following Constitutional and Statutory provisions:

1) Title VII of the Civil Rights Act of 1964;

GROUND FOR REHEARING

THE ARBITRATION OPINION

The Arbitration Opinion page 8, paragraph 1, line 20, submitted into evidence as follows "The County has failed to sustain its burden of proof on this charge." The arbitration opinion page 8 paragraph 2, Ln. 1, "Jones has also complained about violation of his procedural rights in regard to the grievance process. The Review Committee appears to agree that Cover failed to properly address the grievance process." The arbitration opinion page 11 paragraph 1, Ln. 14, states "Suspicions arise because Cover charged Grievance with an unauthorized absence when he was granted leave; charged him with insubordination which was clearly erroneous and the fact that DuPree did not initiate or recommend discipline but Cover did." The Arbitration Opinion page 11 paragraph 2, Ln. 1. "Based upon the foregoing discussion of the issues and findings of fact, the grievances must be sustained on the merits because the County has failed to prove the charges made and it is clear there was no basis for the charges. On July 21, 2003, Phillip A. Jones Sr., now (Jones), filed a timely discrimination civil action within the United States District Court Northern District of Georgia

Atlanta Division. Following Jones documents of dispute resolution showing that, a second level of administrative enforcement is authorized and mandated by the State of Georgia. The State of Georgia do not have a civil service commission board to hear reviews and to investigate violations of civil service employees. The State of Georgia ratification of the Georgia General Assembly Legislature (OCGA - 45 -20 - 01 et. seq.) given review of a local merit system to Courts is in violations of the Civil Service Act.

A. *Grievant Award*

The Arbitration Award Page 12 line 1 states "His only power relates to the written warning and the grievance related thereto. He finds that the written warning was improperly issued and was not appropriate. The Appointing Authority, Cover, did not have cause to discipline Jones in regard to the events of May 11. The warning letter shall be removed from his personnel file and all references thereto shall be stricken from the record. Contrary to the argument of the County that it was a "mere written warning" it was the second step of the progressive discipline given to an employee with a clean discipline record and a threat to future more severe discipline." The ward is as follows: The grievance is sustained. The written warning is invalid and shall be removed from Mr. Jones' record. On October 19, 2005, Jones spoke to the Fulton County Board of Commissioners informing them that the arbitration award have not been complied with nor the remedies for the grievance.

Fulton County has failed to respond to Mr. Jones October 11, 2005 letter requesting for board action. The essence of Jones case shows that Fulton County Government since approval of its self governing authority has departed from establishing a fair dispute resolution program. The ratification of the State of Georgia Legislature (OCGA 45 - 20 - 1 et. seq.) open the door for local governments in Georgia to create a self governing protection at the expense of a fair administrative resolve for its civil service employees.

B. Title VII Violations

The County showing Watson v. Blue Inc., 324 F.3d 1252 (11th Cir. 2003); a company that has a sexual harassment policy may still be held liable if the policy is in effective. The evidence showed County has appropriate policy but the board of commissioners and County ignored their own personnel rules and regulations regarding Title VII filing of EEOC violations actions for protection under the United States Laws governing discrimination. Jones was not treated fairly within policy. The Arbitration opinion shows continuous policy violation within Fulton County Government Personnel Department administration. The evaluation process of Jones showed that race, gender, and national origin was not neutral in the personnel regulations. Jones new sustain grievance remedies to be supervised by the board of commissioners for fair treatment should be upheld.

C. County Protocol Violations

The United States District Court Northern District of Georgia in Civil Action: 1:03-CV-2036-JEC inappropriately administrated a protected civil service protocol in accepting the role of the Civil Service Commission; unlawfully, did violate the fourth step of the Civil Service Act. The particulars are, "Said commission may make investigations concerning the facts, and may report upon all matters touching the enforcement and effects of said rules and regulations, and concerning the action of any examiner or board of examiners; hereinafter, provided for, and its own subordinates, and those in the public service, in respect to the execution of this act." The "Arbitration Award" went beyond the court action within an independent federal investigation allowed within the civil service act and it is now final and appropriately before this Court. The evidence shows the County continued to use retaliation and discrimination against Jones and falsely provided evidence before the District Judge Julie E. Carnes and Magistrate Judge Alan J. Baverman. The ruling of the Arbitration Award and Opinion is appropriately submitted to this Court for review and judgment as evidence.

II. CIRCUIT COURT CONFLICT WITH THE ARBITRATION DECISIONS

The Court is asked to review the evidences showing the County interfered with due process of the employees dispute resolution program. The County did not allow the grievance protocol. The

arbitration hearing sustained the plaintiff showing that the Director "Cover", County Manager, County Attorney and the Board of Commissioners ignored Jones's grievance protocol. The retaliation continued while the district and circuit court review were on going and with the Supreme Court of the United States on appeal. Arbitration Award Page 5, Line ,1 states, "His attempt to elevate the grievance to the Board of Commissioners level was unsuccessful because of the improper interference by Ms. Dancy, attorney for the defendants on the pending federal action." The Eleventh Circuit received Jones Initial Brief of Appellant "Phillip A. Jones Sr. on July 23, 2004. A timely submittal of the Brief for the Appellant Response Phillip A. Jones Sr. was filed on September 2, 2004. In conjunction, a grievance was filed within Fulton County Government on May 13, 2004; two grievances for retaliation and harassment by the Department of Environment And Community Development. The grievance review committee under Fulton County Policy 100-24 shows numerous conflicts within the dispute resolutions programs that showed internal conspiracy within Fulton County Government to deny Jones his rights as a civil service employee. Fulton County Commissioner Chairperson Karen Handel refused to respond responsibly within her role in the grievance process in a letter requesting due process dated August 6, 2004. Joseph Warfel of the Department of Environment And Community Development showed workplace violence towards Jones as an attempt to retaliate and harass Jones doing these proceeding. The Department of Environment &

Community Development harassed Jones through policy on September 15, 2004 with a mandatory Fitness for Duty Evaluation with out cause. On July 18, 2005, the Plaintiff Phillip A. Jones Sr. was sustained in the Fitness Review Evaluation. These procedures were all used in retaliation thus a violation of the federal discrimination act of 1964 within Title VII. County did not provide reason to evaluate and violated their own personnel rules and regulations. On October 13, 2005, the suspension was rescinded but Mr. Cover and the County Manager failed to removed all record pertaining to the warning letter and suspension . On November 1, 2005, Mr. Jones submitted 4 grievances requesting removal of the fitness for duty evaluation without written reasons or written violation from his immediate supervisor. The County Manager was sent on November 7, 2005, a request by Mr. Jones to be reimburse him for the financial damages and the removal of the errors by the County within his personnel files.

Fulton County Interfered With An Employee Grievance

The First Grievance submitted on May 13, 2004 states in step # 1 as follows "The Department of Environment & Community Development did not have (cause) as defined in PR 1800-1 Definition of cause to give a written Warning to Mr. Jones. The Department of Environment error in administration of Departmental Policy and County Wide Policy through PR-100-5-Title VII of Civil Rights Act (retaliation Act), Equal Employment Opportunity

PR-1700-1 and PR-17-2- Standard of Conduct and Ethics." The remedy: "The written warning should be taken out of Mr. Jones personnel files. And, Supervisor must be provided with law for fair treatment."

The second employee grievance Step #1 states " Mr. Phillip A. Jones Sr. was given a warning written that has been shown Mr. Jones did not violates departmental policies nor did he violate County Wide Policy. Mr. Jones was given a written warning based on habitual retaliatory practices shown by the Department of environment And Community Development as represented by Joe Warfel, Christina DuPree and Steve Cover. These acts violates PR-1800-2-Types of Offenses, progressive Discipline And Mandatory Disciplinary Guidelines." The remedy: The Department of Environment has been shown to be habitual in retaliatory practices; therefore, supervisor of Mr. Jones must be given to County Manager or Board of Commissioner."

REASONS FOR GRANTING THE REHEARING

I.

A REHEARING IS WARRANTED BY THIS COURT BECAUSE PETITIONER'S RIGHT TO DUE PROCESS AND FAIR JUDICIAL NOTICE WAS ERRONEOUSLY DENIED.

Petitioner requests, pursuant to Fed. R. Civil "Records" P. 902(1),(2),(3) and (8), that the trial court charge a violation for not taken judicial

notice on relevance material to the case; Fed. R. Civil P. (401) "Relevant Evidence" and material facts that produce direct and circumstantial evidence, was not justified within **Powell v. First National Bank and Trust Co.** 58 Ga. App. 648, 199 S.E. 668 (1938); 31 C.J. S. Evidence, § (3)(a); the judge has broad discretion in taking judicial notice. The reasoning below did not justify the refusal of evidence that this court failed to accept the facts provided by the Petitioner. Judicial notice will be taken of records and proceeding in the same case; **Woodruff v. Balkcom**, 205 Ga. 445, 53 S. E. 2d. 680 (1949); The magistrate judge review failed to rise to civil rights § 7 Government and Administrative Matters, "General matters of government and certain related be judicially notice, **Madden v. Fulton County,** 102 Ga. - App. 19, 115 S.E. 2nd 406 (1960), see 29 AM. Jur. 2d. Evidence, § 37-48; Circumstantial Evidence of this case that was not considered by the United States Magistrate Judge. It showed in the Arbitration Opinion that due process "4th Amendments" of the U.S. Constitution was denied Jones while County openly violated his rights.

A. THE COURT IS ASK TO RECONSIDER THE CONFLICTS WITHIN THE DISTRICT AND APPELLATE COURTS THREATENS NATIONAL UNIFORMITY IN OUR DISCRIMINATION LAWS

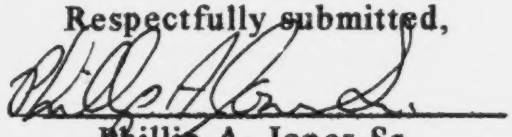
The Magistrate Judge's Report and Recommendations 28 U.S.C. § 636 (b)(1), Fed. R. Civ. P. 72(b) and that Court's Local Rules 72.1(D)(2) showed biases to Fulton County

Government Fed. L. R. C. P. 58.3 Retittus (B). Judgment Modified, Vacated or Reverse, showing error by the District Court within Fed. Rules of Civil Procedures, Rule 56 (e); **Celotex Corp. v. Catret,** 477 U.S. 317, 324; 106 S. Ct. 2548-53; 91 L. Ed. 2d 265, 272-3; The District Court failed to continue this case showing violations to due process within ID at 519. see also, **Donaldson v. Clark,** 78 6f. 2d 1570, 1575 (11th Circuit 1986); **Griffith v. Wainwright,** 77 2f., 2d 822, 825 (11th Circuit 1985). The District Judge failed to receive the Petitioner's objections. The Arbitration's opinion went beyond appropriately showing cause.

Conclusion, respectfully submitted for intervening circumstances on grounds not previously presented within final arbitration opinion and award for Jones showing Fulton County not allow due process in Title VII of the Civil Rights Act of 1964.

For the foregoing reasons, it is respectfully urged that the request for Petition of Rehearing be granted.

Respectfully submitted,



Phillip A. Jones Sr.
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In the Matter in Arbitration

Between

PHILLIP A. JONES, SR. GRIEVANT

and

FULTON COUNTY GOVERNMENT , DEPARTMENT OF ENVIRONMENT AND COMMUNITY DEVELOPMENT, Employer

Opinion and award

Written Warning Letter

May 5, 2005, Atlanta, Georgia, Decided

COUNSEL:
Phillip A. Jones Sr. Pro Se counsel for Grievant

Steven Rosenburg, Senior Attorney, Employer
Valerie Ross, Staff Attorney, Employer

ARBITRATOR: William D. Freemason

The hearing in this matter was held on March 22, 2005 at the Fulton County Building, 141 Pryor Street, S.W., Atlanta, Georgia before William D. Freemason, impartial arbitrator. The Grievant appeared pro se, and the Employer was represented by Valerie A. Ross, Esq. and Steven E. Rosenburg, Esq. of the Fulton county Attorney's Office. Exhibits were received in evidence and sworn testimony was heard from Christina Dupree, Joseph Warfel and Phillip A. Jones, Sr. on behalf of the Grievant and from Steven R. Cover on behalf of the Employer. The Employer made an oral closing argument at the hearing and the Grievant filed a written closing argument, received on March 28. The transcript was received by the arbitrator on April 25, at which time the hearing was closed.

Grievant, and administrative Coordinator in the Department of Environment & Community Development, received a warning letter dated May 12, 2004 stating reasons the warning:

> Your supervisor has informed me that on May 11, 2004, you signed in at 8:00a.m. but were away from your work station for approximately three hours without prior authorization. During this time you were not performing your assigned duties and responsibilities. You did not notify your supervisor that you departing the Government Center, nor did you sign out on the Field Sheet as required by the Department Policies and Procedures. I consider this to be an unexcused and unauthorized absence during working hours (PR 1800-2,Art.1c). I consider your failure to sign out on the Field Sheet as a failure to follow specific instructions (PR 1800-2 Art. 11b).

Grievant filed two grievances protesting the warning letter. The grievances were denied by his immediate supervisor, Ms. Dupree, and by the Department head, Mr. Cover. They were advanced to the Grievance Review Committee which denied his grievance by Order dated July 15, 2005. Grievant duly advanced the dispute to arbitration and the matter is now properly before the arbitrator.

EMPLOYER'S POSITION

There was a clear policy that there would be no campaigning during work hours and the evidence would show Jones campaigned during the hours of 8:00 a.m. and roughly 11:00 a.m. on May 11. This is a clear case of a written warning to an employee who was determined to campaign. He left without authority and did not come back until 10:45. He also failed to sign out on the Field Sheet.

Jones got a mere written warning for unauthorized absence. He did not get a reduction in pay or lose his position or get terminated or suffer other adverse actions. None of his rights were violated. He simply received a mere written warning because he did not come to work or get a prior approval from his supervisor before he went campaigning for a position on the Grievance Review Committee.

In addition to his grievance relating to the merits of the warning, he apparently is saying there was a conflict because of the fact he showed up for a hearing on his grievance before the Grievance Review Committee on June 24 and the Committee was not there. He claims it was re-scheduled in violation of the grievance policies and procedures. His position is clearly wrong, Any scheduled meeting of the Committee may be rescheduled"...for good

cause as determined by the chairperson." It was re-scheduled by notice dated June 23, which was received by Jones on that day. Jones is attempting to apply the cause definition in the personnel regulations to the provision in the policies and procedures manual. That cannot be done. They are different documents and different regulations which are not cross referenced in any way, shape or form. The Committee at its own discretion can reschedule any hearing at any time. If simply rescheduled the hearing like they do all the time if the need arises. He was given full hearing, the matters were heard and considered by the Board and his grievances was denied.

The grievance should be denied because the evidence was not sufficient to show any violation of Grievant's rights or of the Policies and Procedures Manual and the written warning was very appropriate because he decided to campaign during working hours and came back at 10:45 without written approval or any type of approval from his immediate supervisor.

GRIEVANT'S POSITION

Grievant was a candidate for election to a seat on the Grievance Review Committee, the election to be held on May 11, 12 and 13, 2004. About a month before the election, he discussed his situation with Ms. Dupree and she accepted his plan that he would campaign before and after work and on his lunch hour. He stated there might be times he would unexpectedly delayed returning to his office and he would inform her at the earliest opportunity. On May 11, he was pursuing that plan. He arrived at the building about 6:30 and between then and 7:00 he filled out the Time Activity Sheet indicating he would begin work at 8:00a.m. He left the building to campaign elsewhere. He campaigned at the

juvenile court building shortly before 8:00 and left to catch the shuttle back to the government center. He then learned that the shuttle was no longer running to and from the juvenile court building because of repair work on the streets. he was unable to call his supervisor at that time. He returned to the center and amended the Activity Sheet from 8:00 a.m. to 10:45 a.m. Ms. Dupree was in a meeting but he saw her as soon as possible and explained what had occurred. She accepted his explanation and told him to submit a request for leave for the time involved. He submitted it and she signed it. She made no mention of any discipline in regard to the events. He received the warning letter the next day and filed the grievance the following day. He was not given an opportunity to meet on the grievance or obtain counseling at any step in the procedure until the improperly rescheduled meeting before the Grievance Review Committee.

The warning letter was issued without basis and as a result of the ongoing policy and practice of Mr. Cover and Mr. Warfel in harassing and discriminating against Grievant, joined by Dupree. All three were named in a pending action in the United States District Court charging discrimination, harassment and retaliation in violation of Title VII. The warning letter was additional discrimination, harassment and given in retaliation for the federal action. Though the defendants therein had obtained a favorable summary judgment in that action in April 2004, it was on appeal to the court of Appeals at the time of hit incident.

The warning letter cannot be allowed to remain because the County has failed to follow its own procedures throughout the process. It did not counsel with him at the outset. He was not given a hearing by either Dupree or Cover with regard to the grievances. He was entitled to have his

grievance granted when there was a "no show" for the June 24 hearing. The chairperson gave no reason for the rescheduling, there was no mutual agreement to reschedule and there was no evidence of any cause or good cause for rescheduling it. His challenge to two members of the Committee on the grounds of bias was ignored. The two newly elected members whose election he had challenge should not have been permitted to sit on his grievances. His attempt to elevate the grievance to the Board of Commissioners level was unsuccessful because of the improper interference by Ms. Dancy, attorney for the defendants on the pending federal action.

The harassment and retaliation are continuing and ongoing. The warning letter was used as a basis to suspend the Grievant and to charge him with unfitness for duty and to require a fitness for duty evaluation without cause and without following the applicable procedures. The County has continually delayed and postponed the fitness evaluation and refused to stay the same pending the outcome of this grievance procedure.

Based upon all the foregoing, Grievant requests the arbitrator determine there was no basis or merit to the warning letter; was inappropriately and improperly issued; that it be removed from his personnel file and the records pertaining to him; that he be supervised as a high profile employee, that the violations by the County be identified and that he be a participant in a reconstruction of the employees dispute resolution program as part of recommended new duties and responsibilities.

OPINION

According to Jones, he arrived at the Government Center about 6:30a.m. on May 11 intending to do some campaigning before starting work at 8:00, his regular starting time. At about 7:00 a.m., he entered a start time of 8:00a.m. on the Activity Sheet and left the building to go to other buildings to campaign. He did not make any entry on the Field Sheet because he had not started work yet and expected to be back at 8:00 with no need to sign out on the Field Sheet. His expectations suffered a blow when he went to get the shuttle to return to the Center and learned it was no longer running because of the Street repair work. When he learned it was no longer running, he had no cell phone to call Dupree and was concerned that going into the juvenile court building might lead to charges of improperly campaigning too close to a polling place. He made his way back to the Center and amended his entry on the time sheet to show a start time of 10:45 and sought to see Dupree to inform her of the turn of events, but she was in a meeting to his meeting with her was delayed. Sometime between 9:00a.m. when Dupree arrived at work and 10:45, she had looked for him to assign a task and learned he was not around. When he returned and explained what happened, she told him to prepare a leave request for the 8:00 to 10:45 period, which he did and she signed it. She appeared to accept his explanation and the County has not contested that explanation or offered any evidence relating thereto. Nothing was said about any discipline or that he had done anything wrong.

It is well established in arbitration and in the law generally, that the employer has the burden of proof in discipline cases. Disciplining an employee is a corrective action or punishment or both. It is not unlike a criminal

action. It is based upon alleged offenses or allegations of misconduct on the part of the employee. Disciplinary action in the absence of proof of guilt is arbitrary and cannot be considered appropriate. PR 1800-1 states an employee may be disciplined for cause and cause is defined. In this case, the County has the burden of proving the charges of unauthorized absence and insubordination by a preponderance of the evidence.

Cover issued the warning letter on May 12 alleging two offenses by Grievant on May 11: unauthorized absence (PR 1800-2,Art.1c) and failure to sign out on the Field Sheet (PR1800-2, Art11b). Turning first to the absence charge, according to Dupree, Cover issued the warning letter and she did not recommend that he issue the letter. She did testify that she thought it was justified. There is no evidence that she informed Cover of Grievant's explanation or her acceptance of it or that she signed the leave request granting leave for the period from 8:00 to 10:45. There was some confusion about the entry on the Activity Sheet and frequent statements that Jones signed in at 8:00 when the facts clearly show that the entry was made before 8:00 and that employees frequently sign in early and go for coffee or breakfast or such and then report to their work stations at the time they entered on the sheet. Grievant committed no violation when he did that in this case. Grievant did not return at the expected time, nor did he contact Dupree until nearly three hours later. Cover and Dupree admitted that an employee whose absence from the work station was the result of an unforeseen event could ask for and receive permission after the fact within a reasonable time. The evidence is that Grievant met with an unforeseen event, the shuttle bus ceased its normal operation because of the street repairs. Because of the polling place rules, he could not use a phone in the juvenile court building.

The County offered no evidence that it was not an unforeseen event or that he did not advise Dupree within a reasonable time. When he offered her explanation, she accepted it and told him to submit a leave request. When he did so, she granted vacation leave for 2 hours and forty minutes, from 8:00a.m. to 10:45a.m. Hence, he was on an authorized absence. Though Dupree said she was merely making him give her back the hours, in fact those hours were not taken from her because he amended the sheet to remove them and she doubled the assessment by charging him with 2.75 hours vacation leave. To add a warning letter is to sanction him thrice for alleged unauthorized absence when in fact it was authorized when Dupree granted the leave request. The County has failed to sustain its burden of proof on this charge.

Tuning to the second ground, failure to sign out on the Field Sheet, it is first noted that the Department Policies states an employee who expects to be away from his or her work area for more that fifteen minutes, shall make an entry on the Field Sheet and that included periods of leave taken during the day. When Grievant left the Center, he did not expect to be away from his work area at all during the day. When Grievant left the Center, he did not expect to be away from his work area at all during his work time, let alone over fifteen minutes. He left about an hour before his work day was to begin. The policy appears to be applicable only when an employee is at work and leaves for more that fifteen minutes or knows in advance that he will be working elsewhere the following day. Hence, there is no proof that he violated the policy. Equally important, if not more important, is that the charge cites and invokes PR 1800-2, Art. 11b. Article 11 is entitled "Insubordination." The second , or B., section is entitled: "Failure to carry out orders, failure or

excessive delay in carrying out work assignments or specific instructions of superiors." The failure to sign out the Field Sheet is not an act of insubordination. There were no specific instructions of a superior. The County has failed to sustain its burden of proof as to this charge.

Jones has also complained about violation of his procedural rights in regard to the grievance process. The Review Committee appears to agree that the County Manager counsel the Department Head regarding the grievance process. The record supports Grievant's claim that he was entitled to an opportunity to meet with Dupree and with Cover on his grievance. It also supports a finding that there was a failure by Cover to properly investigate the issues. Such constitutes a denial of his rights under the promised procedures. Grievant's claim that he was entitled to a ruling in his favor under the "no show" provision is rejected. That applies only to the failure of a party to appear at the hearing, not to the Committee, and the Department was not required to appear on June 24 because the hearing had been rescheduled. His claim of a violation of his rights in regard to the rescheduling of the hearing before the Committee from June 24 to July 15 has merit. According to the Deputy County Manager, the chairperson of the Committee rescheduled to the hearing for "good cause." The chairperson did not testify and there is not exhibit explaining the reason for the rescheduling. It appears Cover scheduled some vacation for June 24. There is no evidence that he scheduled the vacation before he learned of the scheduling of the hearing or that he could not arrange his vacation to comport with the hearing date. The County argues that Grievant's reference to the definition of "good cause" on PR400-6 and PR1800-1 is "clearly wrong"" that the definitions are in two different documents and two different

regulations that are not cross referenced. It is well established in the law that words are to be given their ordinary meaning or definition absent a stated special or specific meaning. Hence, cause or good cause have the same meaning regardless of the document in which they appear. In fact, the definitions appearing in different sections of the personnel regulations are essentially the same though dealing with different subjects. Good cause requires that action be justifiable, non arbitrary and is based upon good and sufficient reasons. None was shown by the County in this case. That violation is not, however, a basis on which the arbitrator may grant the grievance.

The Grievant also contends it was improper to permit Ms. Nelson and Ms. Carter to sit on and hear his grievances because of alleged bias against him. According to him, they were fully aware that he had filed objections challenging their election to their seats on the Committee because of their conduct in the election proceedings. His evidence does not reveal when he filed the objections or when they were heard by the election officials or their disposition of the challenges. Nor does his evidence reveal that he specifically asked each to recuse herself. It only shows that he objected and the chairperson said they would move on with the grievances with apparently no determination of the issue presented. he has failed to prove they were biased or that their bias infected the decision of the Committee.

The Grievant has repeatedly alleged that warning letter and other actions were taken by Dupree, Cover and Warfel in retaliation for various reasons and actions and that they discriminated against him on racial and sex bases and engaged in harassment. the arbitrator declined to hear evidence relating to those matters that were factors in the action her brought in the federal court under Title VII on that

ground that summary judgment had been entered against him and the arbitrator is precluded by the judgment from further investigation concerning those alleged acts. He has also sought to introduce his belief that a subsequent suspension and fitness for duty evaluation requirement were based on the warning letter and were actions taken in retaliation and were discriminatory and part of a harassment conspiracy. The arbitrator declined to consider evidence on those issues as it involved acts occurring after the warning letter giving rise to the grievances and that the arbitrator does not have jurisdiction beyond the issue of the propriety of the written warning. There was no evidence offered of any facts proving retaliation or discrimination or harassment leading up to the warning letter. There was no evidence offered of disparate treatment.

It is to be noted that Grievant proceeded pro se in this case. He clearly did not understand what was relevant and what was not or the difference between facts and allegations or naked assertions or the need to provide the arbitrator with facts, evidence and arguments based thereon. There is reason to believe that a qualified or competent representative might have produced evidence and argument tending to support the charges made. In a pro se proceeding, the arbitrator must avoid becoming an advocate or participant while seeking to conduct an orderly hearing and obtaining the evidence necessary to enable him to reach a reasoned decision. He must remain impartial. There are facts in this case suggesting management might benefit from a review of the events beyond the evidence in the record. For instance, the County commenced its opening statement and ended its closing statement with a statement of the policy against campaigning during work hours, that Grievant's priority was to campaign and that he campaigned between 8:00 and 10:45 a.m. on May

11. There was no valid reason to introduce that subject. He was not charged with that offense. It is not mentioned in the warning letter. The rule relating to campaigning was mis-stated. The Department discourages it but still allows it with permission of the supervisor. Grievant discussed this with Dupree and she granted permission. Further, there was no evidence that Grievant was campaigning between 8:00 an 10:45 a.m. on May 11. Suspicions arise because Cover charged Grievant with an unauthorized absence when he was granted leave; charged him with insubordination which was clearly erroneous and the fact that Dupree did not initiate or recommend discipline but Cover did.

Based upon the foregoing discussion of the issues and findings of fact, the grievances must be sustained on the merits because the County has failed to prove the charges made and it is clear there was no basis for the charges. Grievant has requested a number of remedies relating to his supervision, duties, county processes, etc. which clearly demonstrate he does not understand the powers of the arbitrator are very limited. He does not have a roving commission to police the County processes, policies and procedures. His only power relates to the written warning and the grievance related thereto. He finds that the written warning was improperly issued and was not appropriate. The Appointing Authority, Cover, did not have cause to discipline Jones in regard to the events of May 11. The warning letter shall be removed from his personnel file and all references thereto shall be stricken from the record. contrary to the argument of the County that it was a "mere written warning", it was the second step of the progressive discipline given to an employee with a clean discipline record and a threat to future more severe discipline.

AWARD

The grievance is sustained. The written warning is invalid and shall be removed from Mr. Jones' record.

William D. Fergusion
Arbitrator

IN THE
SUPREME COURT OF THE UNITED STATES

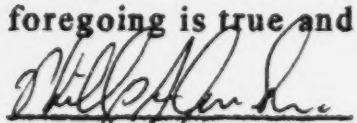
PHILLIP A. JONES SR.
Petitioner
v.
FULTON COUNTY GOVERNMENT
Respondent (s)

PROOF OF SERVICE

I, Phillip A. Jones Sr., do swear or declare that on this date, November 10, 2005, as required by Supreme Court Rule 29, I served the enclosed Resubmit **Petition for Rehearing** on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or delivery to a third-party commercial carrier for delivery within 3 calendar days.

Fulton County Attorney
Rolesia Butler Dancy, Senior Attorney
141 Pryor Street S.W., Suite 4001
Atlanta, Georgia 30303

I declare under penalty of perjury that the foregoing is true and correct.



Phillip A. Jones Sr.
Pro Se Counsel

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CERTIFICATION OF PRO SE COUNSEL

I, Phillip A. Jones Sr., on this10th day of November 2005, has presented in good faith and not for delay; this Petition for Rehearing for grounds intervening circumstances of substantial or contolling effect or to other substantial grounds not previously presented within the May 5, 2005, final Arbitration Award and Opinion sustained Phillip A. Jones Sr.; that, shows Fulton County Government did discriminate within policy should be charged a violation of Title VII of the 1964 Civil Rights Act.

Phillip A. Jones Sr.
Pro Se Counsel
Certification

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